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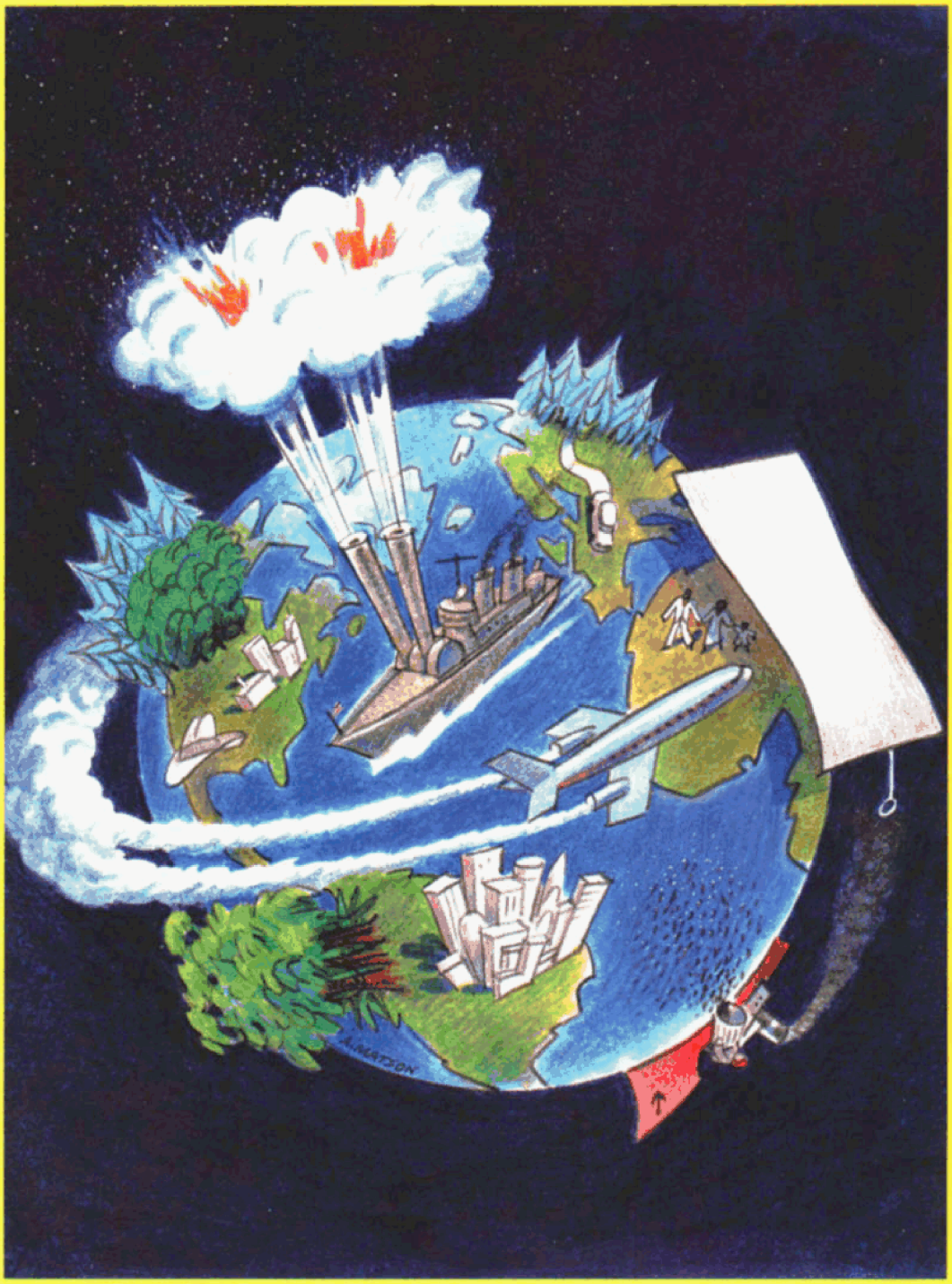

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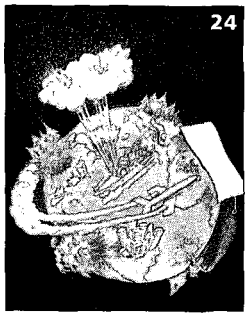

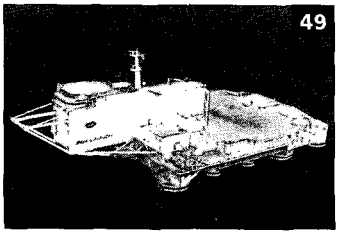

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Fighting Words

The sex talk pundits can't handle

By Virginia I. Postrel

Ridley Scott makes movies about the frailties of human flesh and the capacities of human will. His heroes are not especially introspective. They cope in hostile environments. Sometimes, as in *Thelma and Louise*, they are heroic only in the tragic, Aristotelian sense—done in by fatal flaws. They are not the stuff of romanticism but of earlier, less subjective and emotion-centered art. Indeed, Thelma and Louise die because they cannot master their impulses.

Scott's latest archetypal work is *G.I. Jane*, a film that has sparked unremittingly stupid public comment, much of it from people who have not even bothered to plop down the money to see the movie. It is no more a work of realist fiction—much less some kind of documentary—than *Blade Runner* or *Alien*. It is not, at some literal level, about whether women could or should be Navy SEALs. It is the mythic story of a particular, extraordinary character.

At the movie's moral center is a condemnation of self-pity. The film relentlessly exposes and attacks the corrosive double standards designed to make military life easier for women. And it savages politicians who exploit the serious work of warriors for their own venal and symbolic purposes. These messages are as subtle as a mortar attack. Yet most of the public commentary on the movie has missed them.

This obtuseness is no accident. Archetypes let loose in the culture have great power. And Scott's vision of a woman without self-pity, who controls and releases her righteous rage only in extremely effective self-defense—against first physical, then political brutality—does not fit current cultural agendas.

Conservatives don't like the image of a woman as a heroic public actor, especially if her actions involve martial virtues. They want to keep the simple correspondence between traditionally masculine virtues and men, and traditionally feminine virtues and women, with no room for pesky individuals who won't fit the stereotypes.

To justify tradition, they repair to biology, ignoring the difference between statistical patterns and individual data points: "Men are physically stronger than women. ...Men are also more aggressive," writes columnist Mona Charen, dropping all troublesome qualifiers. But the mean of a distribution is not the distribution as a whole: As a statistical matter, men are also taller than women, but watch the end of a fashion show and you'll see runway models towering over male designers.

Suzanne Fields, another conservative columnist, declares flatly that "men and women thrive in separate but equal single-sex institutions, both public and private." Not "some" men and women, or "most" men and women, but men and women in general. Perhaps Fields is just sloppy, but the generalization is part of a pattern: blurring biology, statistical characteristics, and social institutions and roles.

Despite the aggressive media creations whom Rich Karlgaard has dubbed "right-wing chicks," conservatives are increasingly willing to confess their discomfort with women's public roles: "Can conservatives persuade women to leave the workplace and return to the kitchen and nursery, or, as one of our Founding Fathers put it, to the 'domestic society' where manners are formed and morality taught, and where 'the lovely and accomplished woman shines with superiour lustre'? Right now we're having trouble keeping them out of the trenches," writes Walter Berns in *The Weekly Standard*. In *Commentary*, David Gelernter muses over a personal dilemma: He dislikes the idea of career women but doesn't want to give up his female colleagues.

As Berns suggests, conservatives have pretty decisively lost this particular culture war. The real threat to traditionally masculine public virtues comes not from conservatives who want to deny them to women but from allegedly feminist intellectuals, and some muddle-brained soccer moms (and the politicians who court them), who want to deny them to everyone.

By "traditionally masculine virtues," I do not mean only the martial variety, emphasizing physical courage and physical strength. Caltech, with 30 percent women undergraduates, is as traditionally masculine as the newly co-ed Virginia Military Institute. Both schools' cultures judge students, and expect students to judge themselves, not by what they feel but by what they do. Both embrace competition and challenge—and accept the risk of failure and embarrassment that necessarily accompanies the pursuit of excellence. Both expect young men and women to do things that are hard, even if that means enduring short-term physical, mental, or emotional pain for the sake of long-term benefits.

Once upon a time, long, long ago, mainstream feminism was about making such virtues the province of women as well as men—or, more properly, the province of women who chose to pursue them. Nowadays defending mediocrity is a feminist project. A woman who aspires to test herself, especially in equal competition with men, is deemed "male-identified." Formerly male institutions that seek to uphold their historical standards are charged with ill will toward women.

No sooner had women arrived at VMI than their allegedly feminist supporters began making noises about lowering its physical training standards. "The worst thing VMI could do is expect women to be men and not to take into account the particular skills and strengths women bring," said Marcia Greenberger of the National Women's Law Center. And Pamela Hess, who edits a couple of defense-related newsletters, wrote in *The Washington Post* that VMI's training standards are too high

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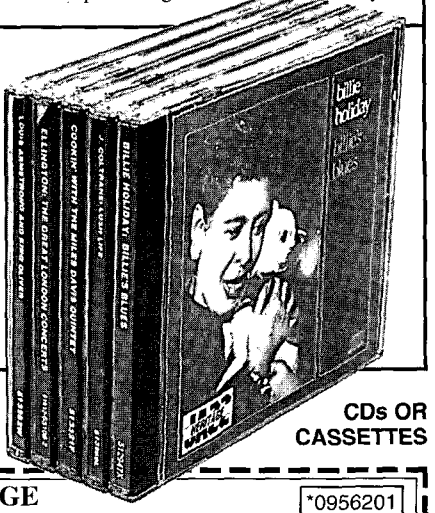
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for women, making them unfair. Plus, she said, "the arbitrary strength and endurance standards...have nothing to do with what is required of students in discharging their so-called military duties. The closest thing to military activity these pseudo-soldiers will ever be asked to do with their physical prowess is march about parade grounds with rifles on their shoulders."

Hess, of course, misses the point of VMI's physical training, which is not practical but personal and pedagogical. "The young men and women at VMI are attempting to see how far they can push themselves, and they don't need to be held back by the usual liberal excuses," wrote *Post* reader James Black in response to Hess. Not surprisingly, this defense of achievement appeared not in a professional commentary article but in a reader's reply to one. The general public is ahead of the commentators on this issue, which helps account for the success of *G.I. Jane*, with its subversive anti–self-pity, anti–double standards message. As Liz Johnston, the mother of a VMI sophomore, said of the school's female cadets, "I hope they will do my gender proud—and not whine like Shannon Faulkner," who forced the Citadel to admit her and washed out almost immediately.

Whining has, however, become a sort of public virtue. And VMI's "rat line" is a lot tougher than some of the experiences women are encouraged to whine about. "I'm uncomfortable when a professor takes my ideas and subjects me to some sort of public humiliation," New York University law student Sarah Thieman told *The New York Times*, complaining about the Socratic method of law school teaching. "A man who's more used to competition maybe can take that kind of intense scrutiny." Her fellow student Alison Shanes, a member of the law review, said, "We're not whining because we're not doing well. We're whining because we're not happy."

Thieman and Shanes are not exactly doing their gender proud. Indeed, one might think they would feel publicly humiliated to find their fragility recorded in *The New York Times*. But they have academic big shots to back them up. Their campaign to change NYU's teaching methods was encouraged by the scholarly work of University of Pennsylvania law professor Lani Guinier, who fortunately did not become Bill Clinton's assistant attorney general for civil rights. In 1995, she and several co-authors published a law review article attacking the Socratic method because it makes female law students feel bad, to the apparent detriment of their grades; the piece was later expanded into a book called *Becoming Gentlemen*, which, as its title suggests, considers traditional legal virtues male territory.

Law school professors' probing questions, their verbal jousting with students, "looks to many women like ritualized combat," say Guinier and co-authors. Socratic teaching, they suggest, forces women to become "social males," competitive, rational, quick-thinking, and sharp-witted. Even though law school exams are graded without names and class participation barely counts in course grades, women earn lower grades than men with similar admissions qualifications.

The authors' conclusion: "There is something about the law school environment that has a negative academic impact on female law students. Although some have said in response to our data that perhaps most women are not well suited to law school or should simply learn to adapt better to its rigors, we are inclined to believe that it is law school—not the women—that should change."

This conclusion is a demand that law schools cease to foster certain virtues—the virtues associated with doing rather than feeling, with public rather than private life, and, yes, traditionally with men rather than women. One could imagine a law school pursuing a curriculum based on traditional feminine virtues: patience, fidelity, modesty, harmony, orderliness, sensitivity, beauty, and manipulative cunning. It would not turn out many trial lawyers or keen legal scholars, but the law is a big field with room for many different sorts of people. That sort of pluralism would not, however, satisfy Guinier and her allies. It would still allow old-fashioned Socratic teaching in other places. They want every place to be the same.

Our public debate tends to insist on the one best way for everything—in this case, the one best way to be a man, a woman, or an androgynous human being. When we talk about sex roles, the debate also mixes

up two different disputes: The first is over whether, and in what roles, women should be allowed to pursue traditionally "masculine" public virtues. The second is over whether such virtues are worthy of pursuit, or whether they are "patriarchal," or just not nice, and should therefore be eliminated. (There are similarly confused, though somewhat less prominent, arguments about traditional feminine virtues.) Both traditionalists and feminists tend to switch arguments to suit their short-term political or rhetorical purposes.

People whose job it is to discuss "women's issues" can rarely be trusted with such matters. They are too busy spinning, too driven by preconceived notions, too dedicated to a uniform vision, and just plain too narrow to accept—much less appreciate—the diversity of individual personalities and preferences, strengths and aspirations. They cannot speak frankly. They have to follow their scripts.

That is why nonprofessionals like Liz Johnston and James Black can address issues of standards and sex more forthrightly than official commentators. And it is why audiences resonate more to the admitted fiction of *G.I. Jane* than to the supposed truths of *Crossfire.*

Prisoners' Dilemma

Private jails are easier to reform.

By Nick Gillespie

The video footage is disturbing in the extreme, an apparent tableau of the worst sort of bullying prison-guard violence: guards kicking seemingly compliant prisoners in the head and groin, swearing at them, beating them with riot sticks and electric prods, forcing them to crawl on their bellies, some with their pants down around their ankles; a German Shepherd biting the legs of at least one inmate.

The tape—reportedly recorded by prison officials for use as a training video, of all things—shows a September 1996 disturbance at a privately operated wing of a Brazoria County, Texas, jail that houses out-of-state inmates. The incident only came to light in late summer as part of a lawsuit filed by Missouri inmates and has set off a firestorm regarding the privatization of prison facilities.

For a number of years, Texas has rented excess prison space to other states seeking to alleviate overcrowding, generating about $40 per bed per day. Currently, Texas incarcerates about 5,500 prisoners from 11 other states; many of the operations are subcontracted out to private companies.

Critics have been quick to fix the blame on privatization per se. In a house editorial, for instance, *The Buffalo News* concluded the video "casts doubt on private jails" and "raises questions about the contracting out of public-safety services and the degree of accountability—or lack of accountability—in such arrangements." Noting that several of the private prison guards involved in the video had documented histories of abusing inmates, the *St. Louis Post-Dispatch* suggested that "Missouri should never turn over its prisoners to the care of...private firms run by people who wouldn't know brutality if it stomped them in the back."

Such concerns, while understandable in light of the raw footage, are misplaced for two reasons: They fail to account fully for the circumstances in Brazoria County, and fail to recognize that it is precisely privatization that allows for more-accountable public services.

Although Capital Correction Resources Inc., a Mississippi-based contractor, operated the wing in which the video was shot, the larger setting was a public jail. Nor were private guards the only ones seen in the incident: Sheriff's department personnel, decked out in full riot gear, participated in the action; similarly, the sheriff's department is charged with covering up the incident. And while at least one CCRI guard involved in the incident had been fired from the Texas Department of Corrections for beating a prisoner, the Brazoria County Sheriff's Department actually had "final approval" on all hires. Clearly, whatever happened in the Brazoria County jail implicates public as well as private prison operators.

Perhaps more important is what has happened *since* the revelations—actions that speak directly to issues of accountability and reform. After viewing a copy of the videotape, Missouri corrections officials canceled the state's $1.8 million contract with Brazoria County and two other sites in Texas and began bringing Missouri inmates home. Earlier this year, Oklahoma officials started removing their prisoners from a Limestone County, Texas, facility—also operated by CCRI—reportedly because of excessive use of pepper spray by guards. (Interestingly, Oklahoma is waiting for space to open up in a private facility in Oklahoma before it can remove all its prisoners.)

As the *St. Louis Post-Dispatch* noted sarcastically, "Now that Missouri and Oklahoma have pulled their prisoners out of CCRI-run jails in Texas, the company is about to go broke. Maybe this is the way the marketplace purges itself of private prison companies that condone and foster abuse." Indeed, it is—and it represents a course of action not likely to be pursued against a public prison.

As University of Connecticut sociologist Charles Logan noted in *Private Prisons: Cons and Pros* (1990), "Economic controls [on private prisons] do not displace political controls, but they can operate more quickly and allow finer adjustments" through contract renegotiation or outright termination. For private prisons, wrote Logan, "market mechanisms of supervision, discipline, and accountability add to those of the political and legal systems. Economic accountability supplements, more than it conflicts with, political and legal accountability."

Of course, privatization doesn't guarantee perfect prisons, or perfect government. But Logan's argument that it increases accountability drives home why privatization can help deliver better government. Capital Correctional Resources may well go out of business after such a high-profile scandal. The same can rarely be said about public agencies that find themselves in similar circumstances.

Evolving Debate

Kudos to Ronald Bailey for "Origin of the Specious" (July). The real target of neoconservatives like Irving Kristol is not science or even immorality—their target is reason itself. Reason, they say, is the great destroyer of social harmony, whether in scientific discovery, religious toleration, or any other form. This is why Kristol has written that Thomas Jefferson, a scientist as well as a leader in religious freedom, "wrote nothing worth reading on religion or almost anything else." Jefferson represents the influence of Enlightenment reason. Conservative historians in the tradition of Russell Kirk prefer to ignore the tradition of Jefferson, Madison, et al., and focus instead on the likes of John Dickenson, who said, "Experience must be our only guide; reason may mislead us."

Fittingly, Jefferson described these neoconservatives, in his second inaugural address, as those who "inculcate a sanctimonious reverence for the customs of their ancestors; that whatsoever they did, must be done through all time; that reason is a false guide, and to advance under its counsel, in their physical, moral, or political condition, is perilous innovation; that their duty is to remain as their Creator made them, ignorance being safety, and knowledge full of danger... they too, have their anti-philosophers, who find an interest in keeping things in their present state, who dread reformation, and exert all their faculties to maintain the ascendancy of habit over the duty of improving our reason, and obeying its mandates."

These modern Federalists think that reason's challenge to biblical literalism is to be—if all else fails—merely hidden from the populace, who have to be forced into moral behavior by tales of bogeymen and hobgoblins. I do not mean that the theory of evolution and a belief in God are incompatible, any more than Christianity and heliocentrism have been since Galileo's day. But the inquisitive scientific mind, demanding proof always, is incompatible with authoritarianism, or the blind maintenance of tradition in the name of social order. Science and religion are not necessarily opposed—but science and the political manipulations of religion are.

Timothy Sandefur
Rialto, CA

An obvious solution to the morality-without-God problem that so bothers the Irving Kristols of the world would be that at least some of the behaviors we have traditionally justified on religious grounds are emergent properties of biological life in general and primates (or perhaps *Homo sapiens*) in particular. That view would allow some features of morality to be historically contingent yet relatively obligatory for healthy, viable human societies. A first step or two in this direction can be found toward the end of Daniel Dennett's *Darwin's Dangerous Idea.* Maybe the task for our age is a reconstruction of the foundations of morality on empirical grounds.

An interesting but depressing reading of where Kristol and like-minded neoconservatives may be headed is: back to the Middle Ages, in the sense of fostering a return to a prescientific worldview. The same issue of REASON in which Mr. Bailey's essay appeared carried a piece on Carl Sagan's last book ("Star Scientist" by Kenneth Silber) which, rightly, praised him for pointing out repeatedly that "widespread scientific illiteracy is a dangerous thing in a society heavily dependent on science and technology." Amen! Such "illiteracy" has multiple components these days. There are those who, like most of my historian friends, cannot relate to mathematics of any sort, or to the powerful tools provided by computer graphics. There are also those who simply don't get the idea of subjecting our beliefs to the test of empirical evidence. Increasingly, there are those who have never been exposed to logical argumentation. On the third point, I recently encountered a Ph.D. student in political science who rejects the idea that there may be logical or empirical grounds for taking some propositions more seriously than others. In his view, it's all ultimately a matter of "hand waving," and whoever is the more skilled sophist will prevail.

Since Darwin, arguments from design have ceased to be credible across a whole range of fields. Attempts to insist otherwise—even if for the best of intentions—strike me as attacking the core of modern science. Science is far from perfect. Nevertheless, like democracy, empirical science may be the best we can do. Given our inability to uninvent things like nuclear weapons and the growing appetite in developed countries for conspiracy theories, it is hard to see that nuking science is likely to help preserve civil societies. If Mr. Bailey properly interpreted Mr. Kristol's motives, then Kristol is being both arrogant and shortsighted in trying to push religion as an opiate of the

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masses. Surely, as suggested above, there are alternatives to blind religious faith, on the one hand, or the despair of Nietzsche's view that without God anything goes on the other.

Barry Watts
wattsba@mail.northgrum.com

Ronald Bailey's article was a fair appraisal of Leo Strauss's political philosophy, particularly with respect to Strauss's Platonist view that the pursuit of knowledge and the necessities of public order would often be in conflict. The only thing I would add is that it is in Plato's *Laws*, not *The Republic*, in which this conflict is most explicitly resolved in favor of order. It is worth noting that even many self-described Straussians find this book impossibly pessimistic.

However, Bailey ought to consider more seriously Strauss's concern over vulgarized philosophical concepts. Darwin's "evolution" has suffered as badly as Jefferson's "equality." As an informal experiment, whenever the topic of evolution comes up, I try to discover what relatively well-educated people mean when they use the term. Too often to be mere carelessness, usage suggests a Lamarckian (end-oriented) rather than Darwinian (random) concept.

I do not know why this understanding is so prevalent, but I would venture that "social evolutionists" like John Dewey play some role. The evolutionary rhetoric of Dewey's organic materialism rested upon the public's viewing evolution itself favorably but not understanding it so well as to see that command-and-control social engineering did not jibe with Darwinian randomness. Lamarckian evolution suits political progressivism far better than Darwinian evolution does, and few will ever know the difference, particularly in Dewey-type schools.

Strauss certainly took the Platonic line that some philosophic truths would erode public order. The most serious problem with scientific knowledge, however, is that it tends to have a multiplier effect for pseudoscientific knowledge in the hands of charlatans who know better and fools who don't.

John C. Povejsil
Scandia, MN

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Leo Strauss, who died in 1973, must have anticipated Ronald Bailey's attempt to include him in the contemporary party of those who would promote religion for political purposes. Strauss stated: "I shall not waste words on the most popular argument...that we need...revelation as a myth. Now this argument is either stupid or blasphemous." (In "The Mutual Influence of Theology and Philosophy" from *Faith and Political Philosophy: The Correspondence Between Leo Strauss and Eric Voegelin, 1934–1964.*)

Strauss wrote on a similar occasion: "In the last analysis [Plato's] writings cannot be used for any purpose other than for philosophizing. In particular, no social order and no party which ever existed or which ever will exist can rightfully claim Plato as its patron." (In "On a New Interpretation of Plato's Political Philosophy," *Social Research*, September 1946.) Mr. Bailey should have considered whether Strauss observed the same principle in his own writings.

Compared to the original, Bailey's account of Strauss's work is superficial and misleading, not to say specious.

Alan E. Johnson
Cleveland, OH

Ronald Bailey's "Origin of the Specious" has left me puzzled. After reading it, I am in serious doubt as to whether Mr. Bailey has read the books by Michel Denton and Michael Behe that he discusses.

Bailey focused on the motives of those who question Darwinism. Motives, like what happened before the Big Bang, are scientifically unknown and unknowable. It may be fun to argue about motives, but facts are facts and erroneous statements are erroneous regardless of the motives of the person presenting them.

Bailey doesn't deal with the crowning arguments of Denton's and Behe's books. He gives no reasoned refutation of Denton's presentation about homologous proteins in different species, evidence which strongly argues against a Darwinian evolutionary progression from simple to complex forms of life. Since these protein molecules are direct mirrors of sections of DNA, this is tantamount to a proof that the DNA sequences do not follow a linear progression from simple to complex life forms—a progression which would be expected if Darwinism were true.

Bailey similarly failed to give a plausible presentation of how any of Behe's examples of "irreducible complexity" could have arisen by gradual, step-by-step mutation and natural selection. This is no particular slam against Mr. Bailey, since no other evolutionist has been able to explain them either. Modern evolutionary theory lacks major pieces of evidence: First, at the macro level, the fossil record is consistently devoid of the gradual transitional forms predicted by Darwin. Second, at the molecular level, we find exactly the same obstacles, gaps, and discontinuities as at the macro level. In fact, the biochemical chasms are even harder to bridge than the gaps between species in the fossil record. Third, the mechanisms proposed to explain these discontinuities while still retaining basic Darwinian principles are themselves tautological. They offer only the vaguest suggestions as to how evolution might have progressed. Gould's "punctuated equilibrium" suggests that plants and animals evolved gradually (a bit faster than previously thought, but still gradually), but only in ways and places such that we could not observe evidence of their having done so! In any other branch of science, such desperate tautological fudging would be laughed off the stage.

Is this the best Darwinists can do? When faced with unanswerable challenges, they attack the motives of those who report these challenges—a classic case of "kill the messenger."

Eric J. Anderson
Ankeny, IA

Ronald Bailey ascribes hidden motives to conservatives' doubts about Darwin. A more plausible explanation is healthy, show-me skepticism. When told that all of life's staggering functional complexity is the result of a simple algorithm, should a reasonable person be a) credulous, because that's what most evolutionary biologists believe, or b) skeptical, until shown convincing evidence of the power of natural selection? Bailey votes for *a* and begrudges the intransigence of others. Well, sure, for decades Darwinism has failed to explain the origin of life, flagella, intracellular transport, metabolism, the genetic code, cellular control mechanisms, embryological development, body plans, vision, feathers, etc. ad nauseam. But heck, that doesn't mean it won't explain them real soon—just ask any Darwinian.

Among other confusions, Bailey gets my critique of Darwinism wrong. He asserts that "Behe is addressing the origins problem," which he seems to take as the problem of the bare origin of life 4 billion years ago. (Bailey says the origin of life "is a question that scientists are only beginning to address in an organized manner." That will surprise Stanley Miller, whose famous experiment launched modern origin-of-life studies in 1953.) Since others had effectively criticized that subject, however, in my book *Darwin's Black Box* I concentrated on the many biochemical difficulties for Darwinism, like the origin of the cilium (which arose about 2 billion years after life started) and the blood clotting system (3.5 billion years after the first cellular life).

Further, I do not "more or less concede that Darwinian evolution occurred" once cellular systems were in place, if by that Bailey means I agree natural selection produced such wonders as the kidney or the flowthrough lung or echolocation. I state clearly (page 41 of my book) that we can't tell what caused those macroscopic systems if we don't first understand how molecular systems were produced. Given the breakdown of Darwinism at the molecular level, I am currently quite skeptical it can explain much about the further development of life.

Bailey questions whether others are letting their philosophy interfere with their judgment about a scientific theory. Perhaps he should ask himself the same question.

Michael J. Behe
Professor of Biochemistry
Lehigh University
Bethlehem, PA

Ronald Bailey replies: I much appreciate the comments of Timothy Sandefur and Barry Watts. Like Sandefur, I, too, am a great admirer of Thomas Jefferson. But reason isn't everything. We must avoid

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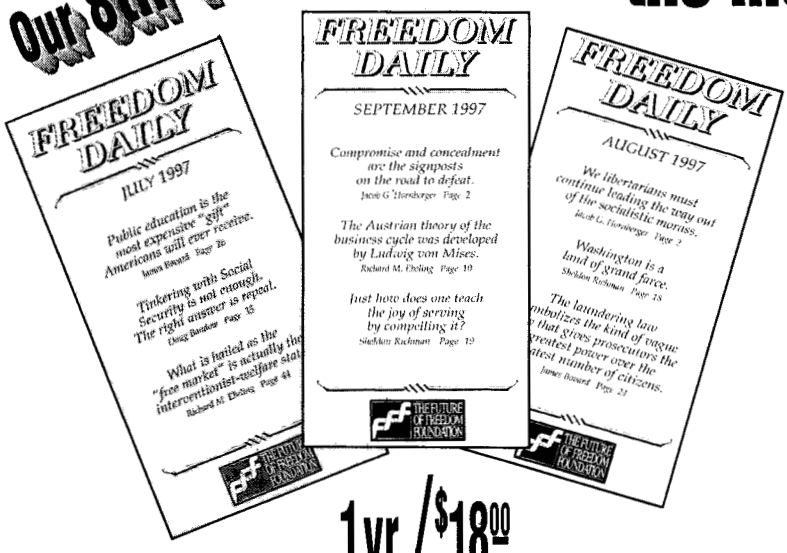
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what F. A. Hayek called "constructivist rationalism."

As Hayek explained in *The Fatal Conceit*, "an evolutionary theory of morality is indeed emerging and its essential insight is that our morals are neither instinctual nor a creation of reason, but constitute a separate tradition between instinct and reason...a tradition of staggering importance in enabling us to adapt to problems and circumstances far exceeding our rational capacities. Our moral traditions, like many other aspects of our culture, developed concurrently with our reason, not as its product."

Furthermore, Hayek suggested: "We owe it partly to mystical and religious beliefs, and, I believe, particularly to the main monotheistic ones, that beneficial traditions have been preserved and transmitted at least long enough to enable those groups following them to grow, and to have the opportunity to spread by natural and cultural selection. This means, like it or not, we owe the persistence of certain practices, and the civilization that resulted from them, in part, to support from beliefs which are not true or verifiable or testable in the same sense as are scientific statements, and which are certainly not the result of rational argumentation."

But this does not mean that humanity must blindly follow tradition. Hayek also wrote that "reason may, although with caution and humility, and in a piecemeal way, be directed to the examination, criticism and rejection of traditional institutions and moral principles."

Sociobiology and evolutionary psychology are beginning to shed considerable light on the sources of human morality. For an excellent popular account, I recommend Matt Ridley's *The Origins of Virtue* (reviewed on page 56 of this issue). What I objected to in my article is the wrong-headed attack on science by some neoconservatives that they apparently believe will bolster popular morality. But I must add that I share the neoconservative concern that some people will illegitimately try to argue from the facts of evolutionary biology to ethical conclusions about how society should be ordered, or even make the claim that biology shows that there is no such thing as morality. This is just as illegitimate as arguing that evolution must be wrong because you think it undermines your notions about human dignity, religion, and morality.

I largely agree with John Povejsil's comments, but believe that more science will eventually drive out pseudoscience.

As Alan E. Johnson points out, Leo Strauss does not acknowledge that "revelation is a myth." Of course he doesn't. To do so would undermine whatever salutary effects that he thought religious belief would have on society. And of course Plato can only be used for "philosophizing," since Strauss believed that public morality is grounded in religious beliefs, particularly divine revelation. In Strauss's view philosophizing is an activity which by its nature tends to undermine public morality.

With regard to Eric Anderson's comments, I did indeed focus on the motives of the neoconservatives like Kristol. After all, that was what my article was about: Why are these political thinkers so eager to attack evolutionary biology? But I did not question the motives of Berlinski, Denton, and Behe. In fact, I believe that they sincerely believe that they have found good evidence against evolutionary biology. Consequently, I took a brief look at the nature of their arguments against Darwinian theory and why they fail.

Probably the only way that "a linear progression" of DNA sequences of the sort demanded by Anderson or Denton could exist is if all of the ancestral species that gave rise to today's current species were still alive to be tested. Since at least 98 percent of all species that ever lived are now extinct, this is, of course, impossible.

With regard to the supposed lack of "transitional species" in the fossil record, Anderson should take a look at the fossil sequence that paleontologists have developed for horses. Based on morphological characteristics, paleontologists generally conclude that fossilized species A appears to be ancestral to fossilized species C. Anti-Darwinists then demand to know where is the transitional species B? When paleontologists find species B, the anti-Darwinists then demand to know where's the transitional form between A and B? When paleontologists find transitional species Aa, the doubters then demand to see the transitional species between A and Aa and so on. Ultimately, the only way to satisfy their demands for transitional forms would be to have fossils for every individual ancestor for species C.

It appears that I gave Professor Behe too much credit when I concluded that he was dealing largely with the origin of life problem. I based that conclusion on his statement that he "believe[s] in descent of life from a common ancestor." If this doesn't mean that Behe "more or less concedes that Darwinian evolution occurred," I don't know what it could mean.

In his letter, Behe dismissively lists all of the things that evolutionary biology has yet to explain completely. What the heck, as he says, biologists have had 138 years since *On the Origin of Species* was published; almost a hundred years since the basis of heredity was dimly beginning to be understood; 44 years since DNA, the substance that makes up genes, was unraveled; 25 years since recombinant DNA techniques were developed, making it easy to probe; and a little more than a year since the first complete genome of any organism (a bacteria) was decoded. What's keeping them? Why haven't they solved all of the problems in biology?

Behe is engaging in what has been called a "God of the gaps" argument—God is smuggled into the gaps of our knowledge. The plain fact is that as evidence is gathered, it all points toward "descent with variation" as the mechanism for the development of species. For a thorough treatment of outstanding issues in both macro- and molecular evolutionary theory, I recommend *Evolution* by Mark Ridley (no relation to Matt).

Finally, no, I am not allowing my philosophy to interfere with my judgment about scientific theory.

The New Yellow Peril

In "MFNemies" (July), Rick Henderson attempts to defend the indefensibly immoral act of financing the economy and state-owned businesses of Red China, thereby propping up the military of a totalitarian nation with a nuclear capability that is indisputably hostile to the United States and most other free nations.

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the motives of our trading partners. If those motives are mutually agreeable and beneficial, there should be no objection to trading with such nations. If, on the other hand, the motives of trading partners are in conflict with our basic standards of human decency and national security, then we not only have a right, but a moral obligation, to not allow our money to be used for our own demise.

Attempting to get the Chinese leadership to treat its own people better is only part of the equation on this issue; the other part is to avoid financing and supporting a dangerous totalitarian regime. Rejecting MFN status for Red China would not in itself make the Chinese leadership behave as we would like. Since every evil act and atrocity by the Chinese leadership has been rewarded very generously time and again by the United States and by Britain (goodbye, free Hong Kong!), why should we expect more-acceptable behavior? Rejecting MFN status, however, would send a very strong message that we will not support, financially or morally, a totalitarian regime that does not even understand the concept of basic human rights and is extremely dangerous to the United States and other countries.

Not only should MFN status be rejected, but the United States should impose an absolute embargo on all trade with Red China. Henderson's blind worship at the altar of free trade without considering the implications to our national security and self-preservation is blindness indeed.

Steven A. Panteli
texas-era@juno.com

Rick Henderson fails to consider our most important reason for denying China most-favored-nation trading status: China is no friend to America. While human rights and our ability to affect changes in that arena in China are important, national security is the most important issue for us to consider. Henderson's article completely ignores this issue.

There seems to be little question that significant portions of the profits from China's MFN status will be used in a military buildup, much to our detriment. In addition, the kind of partnerships which trade requires set up numerous areas of vulnerability for the surreptitious and covert transfer of technology and equipment that China can use in building its military and technological capabilities.

No matter what our reasons for extending MFN to China, China wants MFN for its own reasons. It wants access to our capital and our technology. And it seems China is even willing to involve itself in our internal political processes at the highest levels to insure its needs are met. Under these circumtances, my support for the libertarian principle of free trade is insufficient to outweigh my concerns.

Jere Bashinski
jbashinski@aol.com

Rick Henderson replies: Steven Panteli and Jere Bashinski have bought into a fallacy that permeates many trade discussions: that the "United States" trades with "Red China." Most international trade—even arms sales—takes place not between governments but instead between individuals and businesses that happen to be located within different nations.

Because China's labor camps and its army (both government institutions) sell goods internationally, an interesting response might be for the U.S. government to target those items for high tariffs or even outright bans. And my article mentioned that some in Congress had (unsuccessfully) tried to enact those policies.

The only options under serious consideration at the time my article went to press were those that would completely or conditionally end China's MFN status for all products and from all producers. The people who would be hurt by these policies would not only be the embryonic entrepreneurs in South China and Hong Kong (who would constitute any middle class that might emerge from that huge marketplace), but American producers and consumers. Denying MFN status to China would not bring about the reforms Mr. Panteli and Mr. Bashinski seek; it would also needlessly restrict the rights of individual Americans to buy and sell from whom they choose.

Twin Paradox

In "Fatalist Attraction" (July), Virginia Postrel wrote, "[t]he chances are good that if...a clone were created, the parents involved would be ordinary human beings with reasons both quite rare and extremely sympathetic." Such a case recently took place in California.

Seven years ago, Alissa Ayala was diagnosed with terminal leukemia. Her only hope was a bone marrow transplant from a compatible donor. None were found. In desperation, her father had his vasectomy reversed and her parents conceived another child, hoping the newborn would have compatible marrow. The probability that this would occur was only 25 percent, but that was better than zero, which is what Alissa's chances otherwise were.

The newborn, Marissa, did indeed have compatible marrow. The transplant was successful. And since it is now seven years since Alissa last had leukemia, she can be considered cured. The story had a happy ending.

If the Ayalas were willing to conceive a new infant with only a 25 percent probability of a successful transplant, how much more eager would they have been to conceive Alissa's clone, where the probability of success would have been 100 percent? Even the likes of Patrick Buchanan would have had trouble criticizing the Ayalas for doing so. What would have been so wrong? Alissa would have had a new twin sister—just one 17 years younger than she!

Michael Nollet
Wilmington, DE

Corrections

■ A caption accompanying "Let's Make a Deal?" (October) said plaintiffs' lawyer Stanley Rosenblatt opposed the nationwide tobacco settlement for financial reasons, a charge that did not accurately reflect the content of the article. REASON regrets the error.

■ In "Sources," (October) a sentence was garbled in the first item. It should have read, "...only about 5% of [non–English-speaking immigrant] children each year are found to have gained proficiency in English."

In the second item, the URL for the Cato Institute's Social Security calculator was misstated. It is www.socialsecurity.org/calc/calculator.html.

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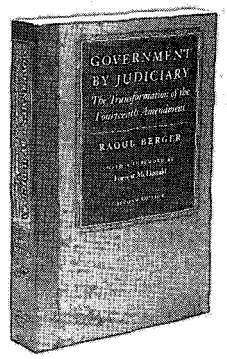

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National Pork Service?

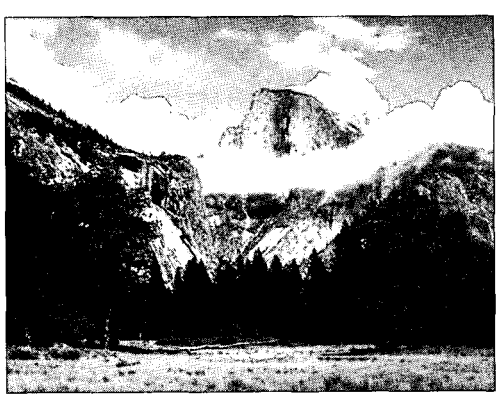
By Rick Henderson

The National Park Service has a backlog of $5.6 billion in construction and maintenance projects for roads, bridges, dams, and other infrastructure. Neither taxpayers (through congressional appropriators) nor park visitors are likely to cough up the money to break this almost literal logjam. The federal budget deal provides about 10 percent of the required funds; a hike in park user fees approved this spring may bring in another $50 million over the next fiscal year.

A July report issued by the Natural Resources Defense Council and the National Trust for Historic Preservation suggests an alternative: Let the park service borrow money to finance construction. The report, "Restoring Our Heritage" (available at www.nrdc.org/nrdcpro/roh/rohinx.html), urges Congress to set up a National Park Authority, much like the Federal Housing Administration or the Tennessee Valley Authority, with the power to issue debt for construction and maintenance projects. If the park authority rather than the Treasury Department received all the entrance and concession fees from national parks, the authority could borrow (and service) more than $1.2 billion, alleviating that backlog.

Both House Speaker Newt Gingrich and Sen. Craig Thomas (R-Wyo.), chairman of the subcommittee on parks, historic preservation, and recreation, have expressed support for the concept. But Don Leal, senior associate at the Political Economy Research Center in Bozeman, Montana, is skeptical. "If [parks] borrowed money on the open market and tied payback to money earned at the facilities, [establishing a borrowing authority] is a decent idea," he says. But a single agency that can borrow money for all the parks, and issue government-backed debt, says Leal, gives Congress and the park service "another [way] to dip into the pork barrel."

Leal is co-author of "Back to the Future to Save our Parks" (www.perc.org/ps10.htm), a PERC study that proposes several other ways the park service could raise money without tapping taxpayers or distorting credit markets. Leal and the NRDC agree that revenue generated by the parks should stay with the park service rather than going to the general treasury.



But Leal would have each park keep the revenue it generates.

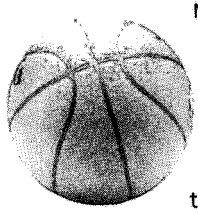
He also suggests letting each park establish a separate endowment for capital improvements, seeded by individual contributions, foundation grants, or corporate sponsors. The first Audubon Society nature preserves were maintained with private funds. And Washington state started a program similar to the one Leal envisions early in 1996, which Leal says is too new to evaluate.

Balance Sheet

By Rick Henderson

ASSETS

▲ **Building Bust.** Los Angeles narrowly escapes the expanding sports welfare state. (See "Edifice Complex," August/September.) The would-be developers of a downtown arena for the NBA Lakers and NHL Kings initially get $70 million in taxpayer loan guarantees. But when the developers conceal the details of their agreement with the city from the public, *Los Angeles Times* columnist Bill Boyarsky and City Councilman Joel Wachs hector them into a commitment to cover the entire cost of the $270-million facility.



▲ **Border Parole.** Is the Immigration and Naturalization Service toast? The congressionally appointed Commission on Immigration Reform, which has backed cuts in legal immigration, says abolish the INS. The commission wants the State Department to handle citizenship requests, the Justice Department to patrol the borders, and the Labor Department to police worksites. Senate immigration subcommittee Chairman Spencer Abraham (R-Mich.) may propose similar changes.

▲ **Language Cops.** U.S. District Judge Marilyn Patel says export restrictions on computer encryption violate the First Amendment. Patel strikes down Clinton administration regulations that require writers of encryption programs to get an export license before they publish their algorithms on the Internet. She rules that computer codes are, "like music and mathematical equations," a form of expression.

▲ **Civil Action.** Opponents of the California Civil Rights Initiative find few friends on the federal bench. In August, the Court of Appeals for the 9th Circuit rules CCRI constitutional. Then in early September, the Supreme Court rejects an ACLU-filed request to block that decision from taking effect while the case is appealed. Whether or not the Supremes take the case, CCRI supporters smell victory.

Rolling Off the Rolls

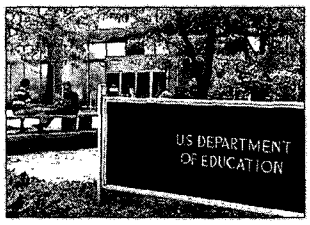
By James Plummer and Rick Henderson

As the economic recovery enters its sixth year, the Federal Reserve Bank of San Francisco has discovered something odd: A record share of the working-age population—67.25 percent—is either employed or looking for work. And those numbers started rising in the middle of last year. It's not unusual for people who haven't had a job to start trying to find one at the end of a recession, but not at this stage of a "mature" recovery. What is going on?

The May issue of the bank's publication *Western Economic Developments* suggests that last year's welfare reform bill is one of the causes. A report on "Labor Force Developments and Welfare Reform in the United States and the Twelfth District" (which includes

▼ Choke Points. Big surprise: The EPA admits its proposed particulate regulations will cost a lot more than the agency first said. (See "Polluted Science," August/September; "Fancy Figures," Citings, October.) Rather than $8.5 billion a year, the EPA's final Regulatory Impact Analysis now anticipates an annual cost of $46 billion. If these regs cost as much as the typical agency edict, expect the actual costs to exceed $100 billion.

▼ Cutting Remarks. Remember when congressional Republicans promised to "zero out" hundreds of federal programs? In *The Wall Street Journal*, the Cato Institute's Steve Moore finds the three cabinet agencies scheduled for the scrap heap—Energy, Education, and Commerce—will spend $47.5 billion next year, only 12 percent less than when Democrats last ran Congress. A dozen education programs once destined for the dustbin will soak up $5.5 billion, 31 percent more than in fiscal 1995.

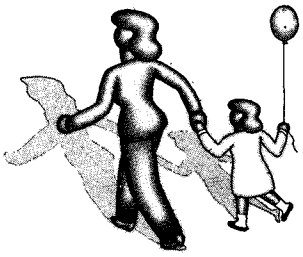


▼ Soda Pups. With the tobacco companies on the run, nanny statists prep for their next crusade. Their latest target: ice... cold...Cokes. In a letter to *The New York Times*, Patricia Lieberman of the Center for Science in the Public Interest calls on the FDA to "look at the health effects of caffeinated soft drinks and determine what additional measures are necessary to protect our children's health."

▼ Youthful Rebellion. Unless tax-funded programs for seniors are privatized, retiring baby boomers may not bankrupt the country, but their grandkids will. The Census Bureau reports that the "boomlet" generation—born since 1980—consists of nearly 75 million people, only 5 million less than the 80 million boomers.

LIABILITIES

Alaska, Hawaii, California, Oregon, Washington, Arizona, Nevada, Utah, and Idaho) looks at one of the largest groups on the welfare rolls—single mothers. Since August of last year, when the welfare bill went into effect, the annual labor force growth rate for single women with families has jumped from 2.4 percent between July 1995 and July 1996 to an annual rate of 6.5 percent in the succeeding months.



Not all single mothers are on welfare, of course. And not every woman seeking work immediately found it. The unemployment rate of single mothers went up during the same period.

The report also notes that "black women, Hispanics, and white teenagers, all of whom have higher than average unemployment rates, accounted for about 60 percent of the total growth in the labor force over the past twelve months"—suggesting that unemployed individuals who might have gone on welfare before last August have instead tried to get jobs.

Planning Pratfalls

By Adrian Moore

The people who have been heaping acclaim on comprehensive urban planning policies like those of Portland, Oregon, should consider recent reports from the former Soviet empire. Years after the collapse of communism, we are starting to learn that central planning fails at the national *and* the local level.

The first lesson comes from World Bank economists Alain Bertaud and Bertrand Renaud, writing in the *Journal of Urban Economics.* They examined the current land use patterns of cities in Russia that were largely destroyed in World War II and rebuilt from scratch under comprehensive and centralized local planning. They found a planning pathology that makes the most sprawling U.S. city look like paradise.

The quintessential "socialist city" was inefficient on an epic scale, with sparsely populated centers that became more densely inhabited as you moved away from downtown. Moreover, most residents lived far from their jobs and faced long commutes. Even worse, the extensive rail transportation systems did not connect homes and offices. Though planners had complete control over the siting of residences and businesses, they could not create efficient cities.

Since 1990, housing and other markets in Russia have been liberalized. As a consequence, residents are mov- ▶

QUOTES

"[T]o privatize religious belief is to trivialize it. When we treat religion as purely personal—irrelevant to the way we live our lives and write our laws—this is not neutrality to religion, it is hostility to religion. The reason is simple: because faith is more than an internal belief, it is a guide to external conduct.

"And for religious liberty to have any meaning, government and business must accommodate that conduct, within the bounds of reason and order."
—Sen. Dan Coats (R-Ind.), supporting the Workplace Religious Freedom Act on the Senate floor in July

"China has done some monstrous things to Tibet. But China's also brought a certain measure of development—roads, power, buildings (even if they're ugly), a certain amount of education, medicine."
—Orville Schell, China expert and dean of the University of California, Berkeley's Graduate School of Journalism, in the September/October *Mother Jones*

BRICKBATS

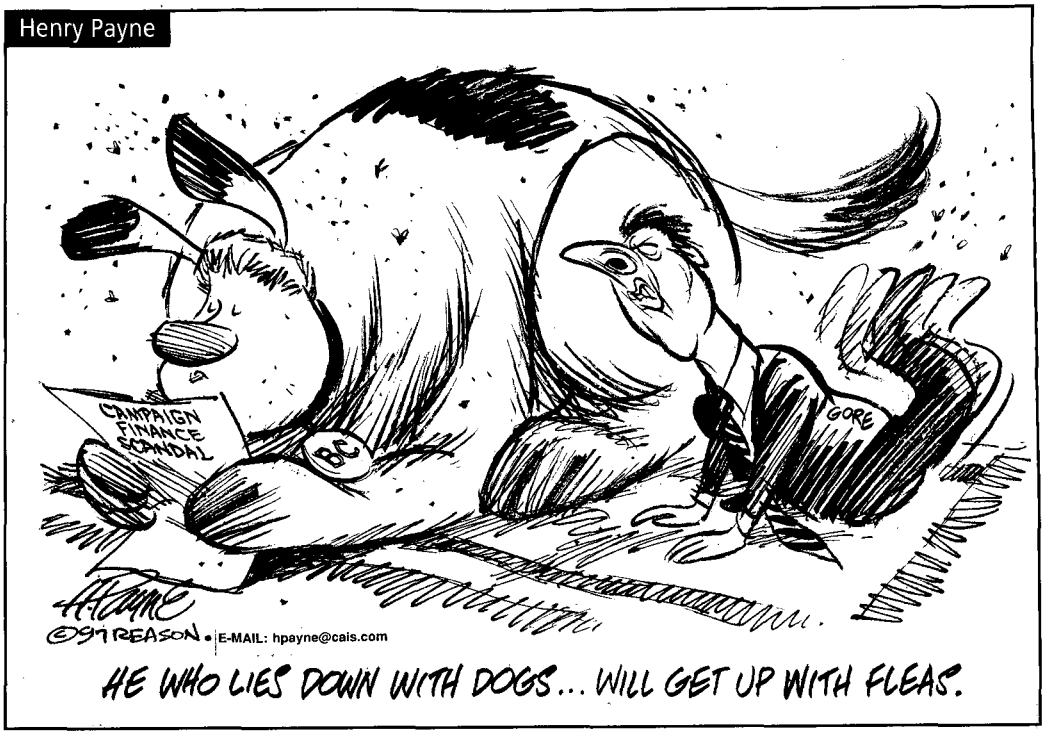
♦Suzanne Levy is looking at a 15-day jail sentence. Her crime? She placed a standard-sized bird feeder in her back yard without permission from the city of New Rochelle, New York. After a neighbor complained, the city hauled Levy into court.

♦Meddlesome city governments aren't to be found solely on the East Coast. Huntington Beach, California, has made it illegal to drink beer in open spaces, even on private property. This means no one can enjoy a beer in his front yard. Even drinking a beer in your garage can get you in trouble if you leave the door open.

♦If you or I kill or harm certain migratory birds, we face jail time and a big fine. But the federal government doesn't. At least, that's the claim of the Justice Department. Several environmental groups have sued to stop logging in the Chattahoochee National Forest, saying it would kill 9,000 nesting songbirds. But the feds have argued that the Migratory Bird Treaty Act doesn't apply to them. So far, the courts have sided with the feds.

♦In Jacksonville, Florida, the Rev. Dale Shaw, president of the North Florida Ministerial Alliance, has embarked on a personal crusade. He's trying to get Richard Wright's autobiography *Black Boy* banned from local schools. He's also trying to get a teacher who assigned the book fired. The reason: The book, which recounts Wright's childhood in pre-World War II Mississippi, contains racially derogatory words. ▶

Henry Payne



ing closer to their jobs and the centers of cities, leading to a more even spread of population, shorter commutes, and a lower variation in housing prices.

A similar lesson comes from the former East Germany. Germany is one of the most densely populated countries in Europe and has an extensive public transit system. Prior to reunification, very few East Germans owned or used automobiles. In 1987, 46 percent of urban travel in West Germany was by auto, compared to only 25 percent in East Germany, where 40 percent of urban travel took place on foot.

In the last 10 years, however, former East Germans have caught up with their western brethren. By 1995, 49 percent of urban travel in the former West Germany was by auto, compared with 48 percent for the former communist country. Even high population densities and well-designed public transit systems couldn't keep former East Germans from getting behind the wheel of a car as soon as they were able to do so.

The totalitarian power of the Soviet state was incapable of controlling work and housing locations in a predictable manner. And the East German experience suggests that free people will pursue their own desires despite the overarching visions of urban planners.

Portland, tear down that wall!

Orchestral Maneuvers

By Nick Gillespie

A recent study from the National Bureau of Economic Research applies the concept of a level playing field to the symphonic stage. In "Orchestrating Impartiality," economists Claudia Goldin and Cecelia Rouse demonstrate that female orchestra musicians have benefitted hugely from the use of "blind" auditions, in which candidates perform out of the sight of evaluators.

In 1970 female musicians made up only 5 percent of players in the country's top orchestras: the Boston Symphony Orchestra, the Chicago Symphony Orchestra, the Cleveland Orchestra, the New York Philharmonic, and the Philadelphia Orchestra. Such a showing, Goldin and Rouse note, reflected extramusical attitudes like that of Zubin Mehta, former conductor of the Los Angeles Symphony and the New York Philharmonic, who once pro-

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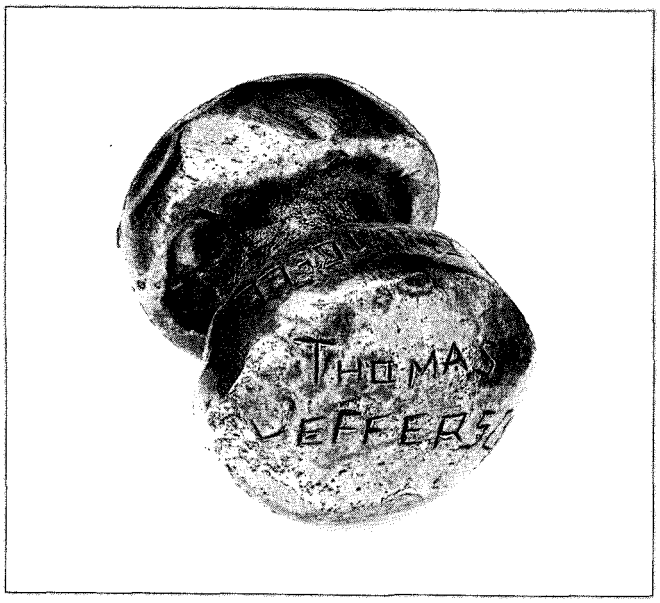

St. Thomas's Dumbbell

Pictured here is an aluminum replica of the dumbbell Thomas Jefferson used for exercise after breaking his wrists. Intended as a paperweight, it's available for 30 bucks from the Monticello Gift Collection, which also sells copies of Jefferson's furniture, family jewelry, and inventions. It even offers the sage's preferred coffee beans.

The relic trade is among man's oldest, and this catalog from The Thomas Jefferson Memorial Foundation is a reliquary in American dress. It transmutes period home accents into Enlightenment objects simply by association. In the end this is actually an interesting aggregate, because Jefferson himself was interesting. Where else will you find collected a working brass orrery (a tabletop solar system model), a rotating bookstand, and a Hemings family genealogy?

Yes, the Hemings connection is here; so is a booklet addressing Monticello slavery. Jefferson is not only surviving his debunkings, they appear to have become part of his mystique.

Customers will want to ponder their choices. "Never buy what you do not want, because it is cheap," the aged Jefferson wrote, perhaps reflecting on a lifetime of his own shopping. "It will be dear to you."

—Charles Paul Freund

claimed, "I just don't think women should be in an orchestra."

But beginning in the '70s and '80s, more and more of the orchestras switched to blind auditions, partly to avoid charges of such bias. Female musicians currently make up 25 percent of the "Big Five." Through an analysis of orchestral management files and audition records, Goldin and Rouse conclude that blind auditions increased by 50 percent the probability that a woman would make it out of early rounds. And, they say, the procedure explains between 25 percent and 46 percent of the increase in women in orchestras from 1970 to 1996.

General Confusion

By Jacob Sullum

Contradicting Gen. Barry McCaffrey, director of the Office of National Drug Control Policy, an expert panel appointed by the National Institutes of Health issued a report in August that said marijuana has significant potential as a treatment for glaucoma, muscle spasticity, AIDS wasting syndrome, the side effects of cancer chemotherapy, and other serious conditions. The panelists said marijuana "looks promising enough to recommend that there be new controlled studies done."

In response to voter initiatives in California and Arizona that approved the medical use of marijuana, McCaffrey insisted "there is not a shred of scientific evidence that shows that smoked marijuana is useful or needed." He called the very idea "a cruel hoax." The Clinton administration has threatened doctors who recommend cannabis to their patients with criminal prosecution, loss of prescribing privileges, and exclusion from Medicare and Medicaid.

Opponents of medical marijuana claim that Marinol —a capsule containing a synthetic version of THC, marijuana's main active ingredient—is a superior alternative. But the NIH panel noted that there are some patients "for whom the inhalation route might offer advantages over the currently available capsule formulation."

Members of the panel also contradicted the notion, promoted by McCaffrey and other administration officials, that marijuana is too dangerous for medical use. "[W]e know that there are no extreme immediate toxicity issues," Stanford pharmacologist Dr. Avram Goldstein said at a roundtable discussion in February. "It's a very safe drug, and therefore it would be perfectly safe medically to let the patient determine their own dose by the smoking route."

Information about the panel's conclusions is available from the Marijuana Policy Project at www.mpp.org.

Limits to Growth

By Michael W. Lynch

With America's economy running on all cylinders, the federal government is threatening to restrict some of its fuel. In mid-August the Immigration and Naturalization Service quit issuing work permits to foreign-born professionals, a group including engineers, health care providers, and other highly educated individuals. The reason: The annual quota of 65,000 work permits set by a 1990 immi-

▶

BRICKBATS

♦The Communist Party USA is still out there, fighting for the proletariat. It intervened firmly in a recent steelworkers' strike against the WHX Corp. The CPUSA boldly pulled its multi-million-dollar investment portfolio from WHX's largest shareholder, Merrill Lynch & Co.

♦From our Maybe-They-Should-Have-Sought-Professional-Help Department: A study in the *New England Journal of Medicine* found that psychiatrists are the type of doctor most likely to get divorced. The study followed 1,100 doctors over a 30-year period and found the divorce rate for shrinks is 51 percent. That's far ahead of second-place surgeons, who had a 33 percent divorce rate.

♦In Hurst, Texas, Michael Repp is looking at one year in jail and a $4,000 fine. It began when a friend complained that a neighbor was letting his grass grow too high. Repp told his friend he'd take care of it. So one Saturday night Repp knocked on the neighbor's door, flashed a badge and told him he was a policeman and ordered him to cut the grass. The neighbor explained that his lawnmower was broken. Then he called the real police. Repp now faces charges of impersonating a public servant.

♦The war against lookism and ageism has moved outside the United States. In Santiago, Chile, a restaurant has been fined $1,200 for refusing entry to five women it claimed were too old and not pretty enough.

Scott Stantis

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STANTIS
YOU KNOW THESE PHONE SOLICITATIONS ARE REALLY GETTING ANNOYING!
I NEVER GIVE MONEY OVER THE PHONE!! SO STOP CALLING!!!
☆6%# AL GORE!..
SLAM

gration reform law may have been filled. At press time, the INS was double-checking its count.

With potential labor shortages prompting complaints by businesses in many industries, this seems like a strange time to turn away skilled hands eager to work. It's even stranger to restrict job opportunities in high-tech industries, which have been a major source of new jobs in the current recovery.

The semiconductor industry alone reports a need for 40,000 skilled workers. The broader information technology field needs nearly 200,000 trained workers, notes a recent report by the Information Technology Association of America.

"The 65,000 cap was picked at a time when both unemployment [rates] and the high-tech industry were a lot different," says Intel's Jenifer Eisen. Her company hired 10,000 people last year and plans to add another 13,000 to its payroll by the end of 1997. "Economic conditions have changed. There should be a way to devise a system where we are not keeping out valuable workers who create wealth for America."

Gang Bang

By Jacob Sullum

A juvenile crime bill pending in the Senate would establish severe penalties for nonviolent firearm offenses. Introduced by Sen. Orrin Hatch (R-Utah), the legislation would establish a five-year mandatory minimum sentence for participants in a "criminal street gang," defined as five or more people who commit at least two covered offenses, representing "a primary activity" of the group, within a five-year period. The covered offenses include violations of the federal Gun Control Act, which restricts possession of guns, bans certain kinds of firearms, and establishes a regulatory system for gun dealers.

This provision, notes Gun Owners of America, could apply to three friends who take their teenaged children target shooting on the weekends but fail to bring parental notes authorizing the kids to possess a handgun at the range. Hunters who tinker with an imported rifle, adding a folding stock on one occasion and a muzzle brake on another, could also be defined as a criminal street gang and face a mandatory five-year sentence.

To make matters worse, Hatch's bill applies the Racketeer-Influenced and Corrupt Organizations Act to gun law violations. RICO allows property forfeiture and prison

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sentences of up to 20 years for "a pattern of criminal activity" involving two or more offenses. It also permits private parties to sue violators. Under the original version of Hatch's legislation, a gun dealer who made a couple of paperwork errors could have lost his store and any other property used for business

purposes, gone to prison for a decade or two, and, to top it off, faced a lawsuit by Handgun Control Inc.

After several of his colleagues objected, Hatch removed paperwork violations from the RICO provision. But it would still cover other nonviolent offenses, such as possessing a firearm within 1,000 feet of a school. Thus someone who keeps a handgun in his glove compartment for self-defense and drives past a school on his way to and from work could forfeit his car and go to prison for 20 years.

The juvenile crime bill is not expected to reach the Senate floor until October. Gun Owners of America (www.gunowners.org) is tracking the legislation.

Tangled Web Pages

By Brian Doherty

The Federal Trade Commission has lately become quite interested in the possibly nefarious and privacy-violating uses of personal information gleaned through commercial Web sites. But federal government Web sites also engage in some sneaky information-collecting practices, says a new study from the private research organization OMB Watch.

In the wake of findings by the Electronic Privacy Information Center that most popular commercial Web sites lack basic privacy protection standards, OMB Watch decided to do a similar survey of 70 federal government Web pages. It found that 44 percent of the sites surveyed collect personally identifiable information, and only 35 percent of those notify the user how such information will be used or under what authority it is requested, even though that is often required by such laws as the Privacy Act of 1974 and the Paperwork Reduction Act of 1995.

Researchers also found three sites using the notorious computer "cookies"—programs that leave marks on the user's hard drive, without the user's knowledge, through which the Web server can monitor the visitor's use of the site. Since a draft of the report was released, all three cookie-using agencies—the Department of Veterans Affairs, the Federal Emergency Management Agency, and the National Science Foundation—have ceased the practice. Even so, cookies a government agency has used would stay in the unaware citizen's hard drive until 2010—"long beyond the necessity for any legitimate use laid out by federal webmasters," the report notes.

DATA

Vice Charge

By Jacob Sullum

Critics of the nationwide tobacco liability settlement proposed last June complained that it did not include a cigarette tax hike. Not long after the deal was announced, Congress approved a budget package that will raise the federal excise tax by 10 cents a pack in 2000 and another 5 cents in 2002—far less than anti-smokers would like. The current federal tax is 24 cents, and state taxes range from 2.5 cents to more than 80 cents a pack. For the average pack of cigarettes, the total tax represents about a third of the price.

Self-styled progressives, who usually favor redistribution of income from the top down, are nevertheless fond of tobacco taxes, which fall much harder on the poor than the rich. These taxes are especially regressive because the poor are more likely to smoke and because poor smokers spend a larger share of their income on cigarettes than affluent smokers do. In 1990, reports Harvard economist W. Kip Viscusi, smokers represented 19 percent of Americans earning $50,000 or more a year and about 32 percent of those earning less than $10,000. Tobacco taxes consumed 0.4 percent of the median income for smokers in the first group, compared to 5.1 percent for smokers in the second group—nearly 13 times as much. Providing further evidence of the cigarette tax's disproportionate impact, the Tax Foundation estimated where the burden of the recently enacted 15-cent increase will fall.

The Cigarette Tax Hike: Who Pays?

Adjusted Gross Income	Share of Tax Burden	Five-Year Total (millions)
under $15,000	34.0%	$1,756
$15,000 to $25,000	17.2%	891
$25,000 to $35,000	16.8%	866
$35,000 to $45,000	6.9%	357
$45,000 to $60,000	8.8%	454
$60,000 to $75,000	6.1%	314
$75,000 to $100,000	4.1%	211
$100,000 to $200,000	4.7%	245
$200,000 or more	1.4%	73

Source: Tax Foundation

Faithful Incentives

By Alexander Volokh

Over the past couple of decades, analysts studying such religious move- ▶

BRICKBATS

◆Youth baseball is a big deal in Lillian, Alabama, and local firms are proud to sponsor teams. But some parents aren't so proud of one local sponsor, C&J Video. C&J offers, in addition to the latest Hollywood blockbusters, a select assortment of adult videos. The store has sponsored a team for several years, but this year the parents of four kids on the team discovered what the store keeps in that room in the back. Instead of moving their kids to other teams, the parents filed a *civil rights lawsuit against* the Lillian Sports Association, claiming their kids' *rights had been violated* when they were "forced" to wear the C&J logo on *their uniforms. Before* trial, lawyers for the two sides agreed to disband the team and move the players to the other five teams in the league.

◆New car sales have been down in Italy for four years now. The government has decided that's a problem it has to address. So it's offering subsidies for new car buyers. Anyone who gets rid of a car more than 10 years old and buys a new one will get 4 million lire (about $2,550). Of course, automobile manufacturing isn't the only Italian industry with declining sales. The makers of motorbikes, refrigerators, and washing machines now want similar incentives for their products.

—Charles Oliver

Chip Bok

ments as the "consciousness reformation" and the revival of fundamentalism have often assumed they are rooted in changing religious preferences among large groups of people. Yet an article in the April 1997 issue of *Economic Inquiry* suggests that government policies affecting supply and demand play a role as well. In "Deregulating Religion: The Economics of Church and State," economist Laurence Iannaccone of Santa Clara University and sociologists Roger Finke of Purdue University and Rodney Stark of Washington University analyze several cases.

The emergence of the 1970s consciousness reformation in the United States, which featured the rise of such Asian-inspired "cults" as the Unification Church and the Hare Krishnas, typically has been attributed to the willingness of young adults in the baby boom generation to challenge Western materialism, individualism, and rationalism. Iannaccone and his co-authors instead find a cause for the flowering of Asian religions in the Immigration and Nationality Act Amendments of 1965, which sharply increased the number of Asian immigrants.

And while many observers have blamed economic frustration or reactionary sentiments for the fundamentalist revival of the 1970s and 1980s, the authors instead cite a relaxation of Federal Communications Commis-

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sion rules. Before 1960, the FCC considered blocks of time a station donated to religious organizations part of a broadcaster's "public service" requirement when deciding whether to renew a station's license; air time purchased by religious groups, however, didn't count. After 1960, the FCC stopped giving preferential treatment to donated religious programming. Broadcasters responded by selling time to the highest bidder, which hurt complacent mainstream denominations and aided charismatic televangelists who could rely on listener contributions.

Most significantly, Iannaccone and his colleagues find that as the level of religious competition in a country increases, church attendance also rises. In Sweden, for instance, the church is state-run, Swedes automatically become church members at birth, and church employees work for the government. While 95 percent of Swedes retain church membership, and 70 percent have their children baptized in the church, only 2 percent attend Sunday services. "The Established Church is like a post office," says the bishop of Sweden. "People don't rush to it when it opens....They are just happy it's there." ◆

"The revolution at the state and local government level will help transform America and every American should be aware of it and of this book."

—House Speaker Newt Gingrich

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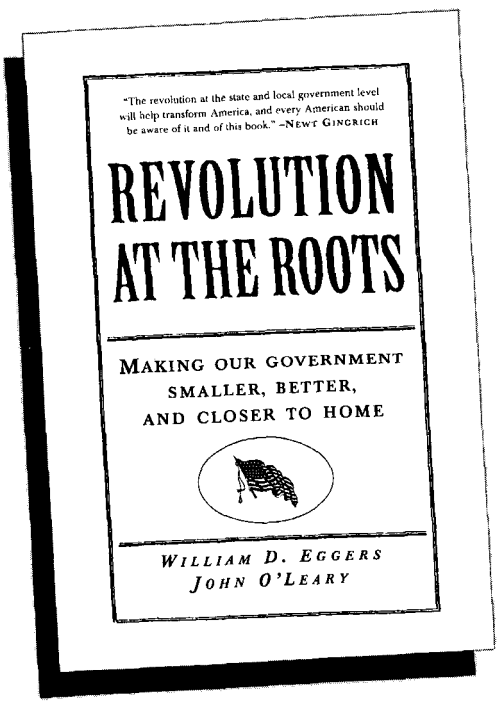
"The revolution at the state and local government level will help transform America, and every American should be aware of it and of this book." –Newt Gingrich
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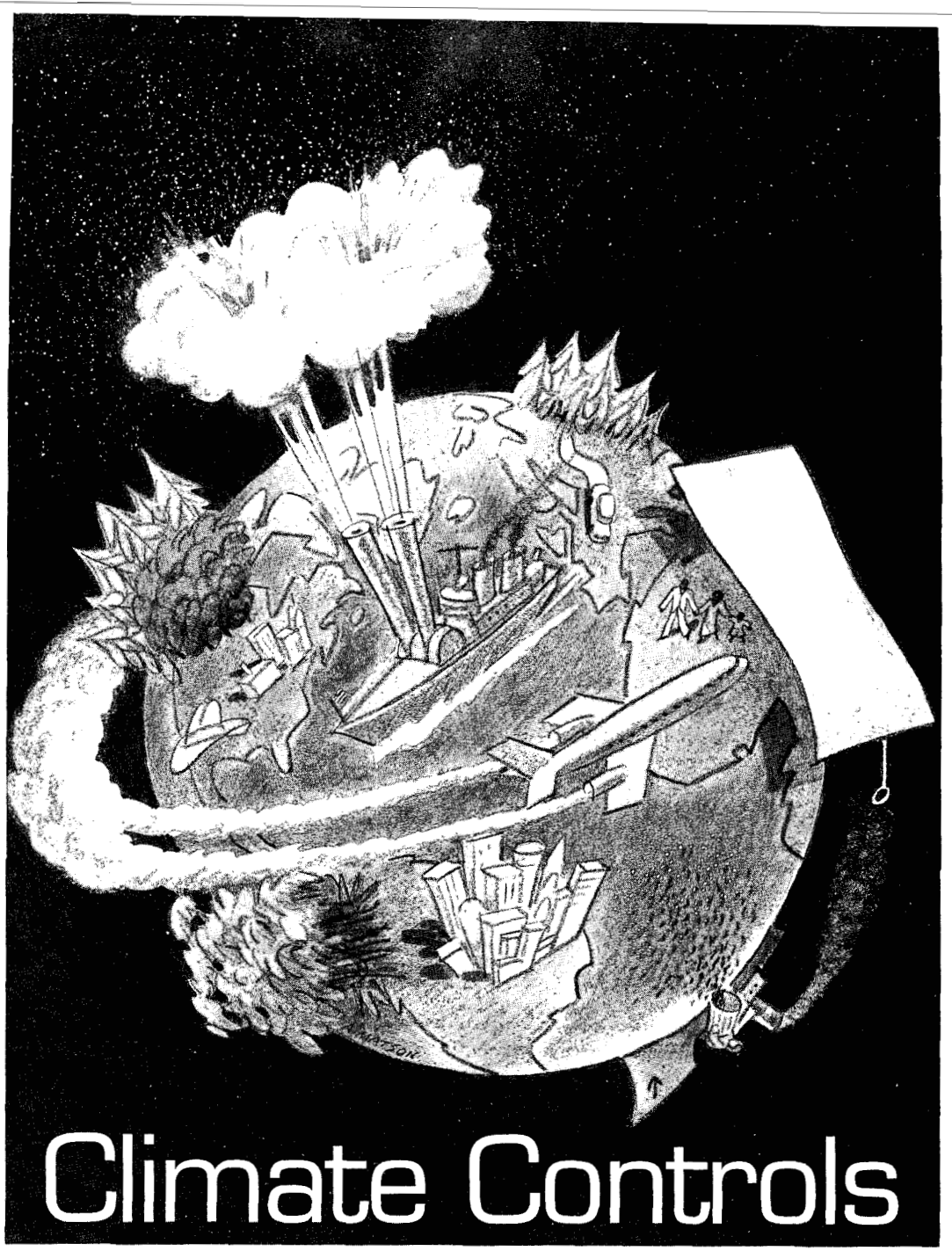


Climate Controls

If we treated global warming as a technical problem instead of a moral outrage, we could cool the world.

ALTHOUGH WE ARE getting better and better at it, forecasting the weather is still remarkably tricky. Far easier to predict the *political* climate, especially when it comes to the issue of global warming. To wit: In December, negotiators from around the world will meet in Kyoto to work out an international treaty to deal with what most (though not all) scientists believe is a 0.5-degree-centigrade increase in temperatures over the past century, and the promise of more to come.

By Gregory Benford

All major participants, including the U.S. representatives, will argue that the *only* way to address global warming is to reduce significantly levels of carbon dioxide and other greenhouse gases that are plausibly (though not definitively) linked to the rise in temperatures. Although a group of small island nations will suggest a 20 percent reduction in greenhouse gases, members of the European Union will most likely carry the day with a plan to cut emissions of carbon dioxide, methane, and nitrous oxide by at least 15 percent over the next decade.

The Clinton administration may object to those specific targets, but it will enthusiastically support the consensus that the only way to counter global warming is by reducing emissions. Indeed, the president announced in August that "we owe it to our children" to sign a treaty reducing consumption of greenhouse gases, a position echoed by Interior Secretary Bruce Babbitt, who has called dissenters "un-American," and chief economic adviser Janet Yellen, who has called cost-benefit analyses of cutting greenhouse gases "futile."

Such thinking is perfectly in keeping with the universal environmentalist position, which is best understood as a starkly Puritan ethic: "Abstain, sinner!" "The only way to slow climate change is to use less fuel," asserts Bill McKibben in *The End of Nature*, a book that roundly condemns such luxuries as privately owned washing machines and oranges shipped to cold climates. And if a 15 percent reduction in greenhouse gases seems extreme, consider that many ecologists champion far more costly conservation measures as the only solution. Ross Gelbspan's *The Heat Is On* even urges a government takeover of the energy sector and a massive propaganda campaign. In the wake of the Kyoto conference, expect to see calls for a Greenhouse Czar as global warming is brought to broad, persistent public notice.

Such hand wringing is as unimaginative as it is unequivocal. Instead of draconian cutbacks in greenhouse-gas emissions, there may very well be fairly simple ways—even easy ones—to fix our dilemma. But the discussion of global warming never makes this clear; it seems designed to preclude any hint that we might remedy the situation except through great sacrifice, discomfort, and cost. Indeed, it seemingly assumes a direct relationship between the level of sacrifice, discomfort, and cost demanded by any proposed solution and its scientific efficacy. Solutions based on suppressing fuel use will cost us dearly, in terms of both dollars spent and standard of living. Economists differ over the price tag, with a rough analysis yielding an estimate of about $250 billion a year to reduce carbon dioxide emissions alone by 15 percent worldwide. (This number is easily debatable within a factor of two.) To this price we must add the cost of reducing other greenhouse gases, a cost felt not merely in our pocketbooks but also in the goods, services, and innovations whose production would be halted or forgone.

But for a number of reasons that I will discuss below, now is precisely the time to take seriously the concept of "geoengineering," of consciously altering atmospheric chemistry and conditions, of *mitigating* the effects of greenhouse gases rather than simply calling for their reduction or outright prohibition. While such a notion may seem outlandish at first blush, it merely acknowledges explicitly what everyone already understands: that human activity has an impact on the planet.

ART MATSON

Forty years ago, the noted atmospheric scientist Roger Revelle declared that "human beings are now carrying out a large scale geophysical experiment" by pumping billions of tons of carbon dioxide into the air. The question before us should not simply be how best to stop the experiment—and, by extension, the prosperity and progress allowed by cheap, abundant energy.

Rather, the question should be how best to *design* that experiment, so that we maximize benefits and minimize costs. As the citizens of the advanced nations become convinced that global warming is an immediate threat worthy of response, they will legitimately ask for solutions that demand the least sacrifice.

Politics and Parasols

A little-noticed 1992 National Academy of Sciences panel report spoke directly to this issue. The report clarified the science behind global warming and then ventured far from the ruling environmental orthodoxy: Could we *accept* that greenhouse gases will rise and find ways to compensate for them? Instead of cutting gases, could we intervene to mitigate or offset the warming they may cause?

Climate modification is time-honored, though not clearly a winner. Cloud seeding in the United States during the 1940s and '50s met some success but ended in a blizzard of lawsuits from those who claimed their local rainfall had been diverted by neighboring areas. (Though such assertions had little scientific proof, courts felt otherwise.) During the Cold War, both sides studied a menu of climatic dirty tricks, including schemes to kill the opponent's crops.

These programs foundered on a fundamental fact: Before *modifying* a climate, one must first grasp it. At the level of understanding available in the 1960s, only spectacular interventions would have left discernible signatures. Climate variability was so little fathomed that weather prediction was pointless beyond roughly a week.

But in progress little noticed by the public, systematic weather prediction has advanced more than tenfold in its assured time range. By watching the sun, atmosphere, ocean, land, and clouds using satellites, advanced aircraft, ships, and a tight grid of land-based observations, we have diminished the uncertainties about long-range weather. We are still just talking about the weather, but the talk is of higher quality. Earlier this year, for instance, the National Oceanic and Atmospheric Agency predicted a coming wet winter six months in advance, based on temperature measurements of tropical waters, presaging a new *El Niño* ocean current. Whether that prediction is right or wrong—the coming months will decide—we are entering a new era in forecasting. With the latest systems, backed by heavy computer modeling, we will shrink uncertainties, identify subtle feedback loops, sniff out regional pollution patterns, discern the spread of deserts and the withering of forests.

Sensitive global measures of disturbance will shed further light on polar and glacial contractions, ozone levels, volcanic dust, levels of the oceans. There is even a technique available for cheaply gauging global reflectivity by measuring "earthshine"—the faint glow of our reflected light, seen on the dark portion of a crescent moon. Using a small telescope and makeshift gear, as-

tronomers easily showed that we reflect 30 percent of incoming sunlight back into space—a number that our satellite system got earlier, at a price tag of hundreds of millions of dollars. Such innovation will lessen the costs and confusions of global understanding, a help we will need dearly if and when the greenhouse predicament worsens.

Geoengineering

Some geoengineering systems appear possible to deploy now, and at reasonable cost. They could be turned on and off quickly if we got unintended effects. It would be relatively easy to run small-scale experiments to answer questions about how our current atmosphere behaves when one alters the kind of dust, or aerosols, in it. Nuanced knowledge is crucial; the biosphere is a highly nonlinear system, one that has experienced climatic lurches before (glaciation, droughts) and can go into unstable modes, too.

Indeed, some critics argue that this simple fact precludes our tinkering with the "only Earth we have." Earth's climate might be chaotically unstable, so that a state with only slightly different beginning conditions would evolve to end up markedly different: An engineered early frost this year might mean an ice age the next. But we also know that Earth suffers natural injections of dust and aerosols from volcanoes, driving weather changes. Experiments that affect the planet within this range of natural variability could be allowed with little to no risk.

The simplest way to remove carbon dioxide, the main greenhouse gas, is to grow plants—preferably trees, since they tie up more of the gas in cellulose, meaning it will not return to the air within a season or two. Plants build themselves out of air and water, taking only a tiny fraction of their mass from the soil. Forests, which cover about a third of the land, have shrunk by a third in the last 10,000 years (though they have grown over the last half-century in the United States, mostly due to market forces).

Like the ocean, land plants hold about three times as much carbon as the atmosphere. While oceans take many centuries to exchange this mass with the air, flora take only a few years. As tropical societies clear the rain forest, the temperate nations have actually been growing more trees, slightly offsetting this effect. In the United States, we have lost about a quarter of our forest cover since Columbus, and replanting occurs mostly in the South, where pine trees are a big cash crop for the paper industry. But globally we destroy a forested acre every second. Just staying even with this loss demands a considerable planting program.

Trees soak up carbon fastest when young. Planting fast-growing species will give a big early effect, but what happens when they mature? Eventually they either die and rot on the ground, returning nutrients to the soil, or we burn them. If this burning replaces oil or coal burning, fine and good. Even felling all the trees still leaves some carbon stored longer as roots and lumber. Buildings can hold lumber out of this cycle for a century or so.

About half the U.S. carbon dioxide emissions could be captured if we grew tree crops on economically marginal croplands and pasture. More forests could enhance biodiversity, wildlife, and water quality (forests are natural filters); make for better recreation; and give us more natural wood products. Even better, one can do the cheapest part first, with land nobody uses now. This would cost about $5 billion a year, and a feel-good campaign would sell easily, with merchants able to proclaim their eco-virtue ("Buy a car, plant a grove of trees").

This would work reasonably well in the short run. But trees take water, and one must be careful not to exhaust the soil, so this is a solution with a clear horizon of about 40 years. Soaking up the world's present carbon dioxide increase solely through trees would take up an Australia-sized land area—that is, a continent. Most such land is in private hands, so the job cannot be done by government fiat. Still, a regional effort could make a perceptible dent in overall carbon dioxide levels.

The Geritol Solution

The oceans comprise the other great sink of greenhouse gases; some researchers estimate that they absorb 40 percent of fossil-fuel emissions. In coastal waters rich in runoff, plankton can swarm densely, a million in a drop of water. They color the sea brown and green where deltas form from big rivers, or cities dump their sewage. Tiny yet hugely important, plankton govern how well the sea harvests the sun's bounty, and so are the foundation of the ocean's food chain. Far offshore, the sea returns to its plankton-starved blue.

The oceans are huge drivers in the environmental equations, because within them the plankton process vast stores of gases. Though cause and effect are not quite clear, we do know that in ice ages, carbon dioxide levels dropped 30 percent.

Could we do this today? Driving carbon dioxide down should lower temperatures, certainly. But how?

The answer may lie not in the tropics but in the polar oceans, where huge reserves of key ingredients for plant growth—nitrates and phosphates—drift unused. The problem is not weak sunlight or bitter cold, but lack of iron. Electrons move readily in its presence, playing a leading role in trapping sunlight.

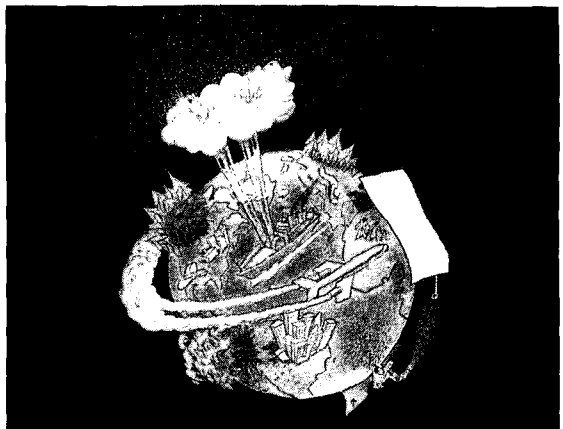
A radical fix would be to seed these oceans with dissolved iron dust. This may have been the trigger that caused the big carbon dioxide drop in the ice ages: The continents dried, so more dust blew into the oceans, carrying iron and stimulating plankton to absorb carbon dioxide. Mother Nature can be subtle.

Such an idea crosses the momentous boundary between quasi-natural mitigation such as tree planting and self-evidently artificial means. Here is the nub of it, the conceptual chasm. With a boast that may cost his cause dearly, the inventor of the idea, John Martin of the Moss Landing Marine Laboratories in California, said, "Give me half a tanker full of iron, and I'll give you another ice age."

The captured carbon gets tied up in a "standing crop" of plankton. These tiny creatures dwell within a few meters of the surface. To truly bury the gas, they must somehow carry it into the vast bulk of the whole ocean. Some biologists believe that from the plankton the carbon dioxide should slowly dissolve into the lower waters, though we are uncertain of this. Perhaps the carbon dioxide eventually is deposited on the seabed. This last process no one has checked. Somehow, though, a good deal

of carbon does end up in the deep ocean sinks.

First proposed by Martin in 1988, the "Geritol solution" of adding iron to the ocean had a rocky history. Many derided it automatically as foolish, arrogant, and politically risky. But in 1996 the idea finally got tested by the U.S. government, and it performed well. Near the Galapagos Islands lies a fairly biologically barren area. Over 28 square miles of blue sea, scientists poured 990 pounds of iron during a week of testing. Immediately the waters bloomed with tiny phytoplankton, which finally covered 200 square miles, suddenly green. Plankton production peaked nine days after the experiment started. One thousand pounds of iron dust stimulated over 2,000 times its own weight in plant growth, far greater than the performance of any fertilizer on land. The plankton soaked up carbon dioxide, reducing its concentration in nearby sea water by 15 percent. It quickly made up this deficiency by drawing carbon dioxide from the air.



A radical fix would be to seed polar oceans with dissolved iron dust. This may have been the trigger that caused the big carbon dioxide drop in the ice ages: The continents dried, so more dust blew into the oceans, carrying iron and stimulating plankton to absorb carbon dioxide. Mother Nature can be subtle.

Projections show that since this process would affect only about 16 percent of the ocean area, a full-bore campaign to dump megatons of iron into the polar oceans probably would suck somewhere between 6 percent and 21 percent of the carbon dioxide from the atmosphere, with most recent estimates settling around 10 percent. Such scary, big-time tinkering is the extreme; the method would have to be tested at far lower levels. Still, this mitigation could dent the greenhouse problem, though not solve it entirely.

Even such partial solutions attract firm opponents. Geoengineering carries the strong scent of hubris. What is best described as eco-virtue reared its head immediately after the 1988 proposal, even before any experiments took place. Following the Puritan model that any deviation from abstinence is itself a further indulgence, many scientists and ecologists saw in Martin's plan an incentive for polluters. "A lot of us have an automatic horror at the thought," commented atmospheric authority Ralph Cicerone of the University of California at Irvine.

Other specialists retaliated. Russell Seitz of Harvard said the Galapagos experimenters were afraid to seem politically incorrect. "If this approach proves to be environmentally benign," Seitz said, "it would appear to be highly economic relative to a Luddite program of declaring war against fire globally."

Large uncertainties remain: How would the iron affect the deeper ecosystems, of which we know little? Will the carbon truly end up on the seabed? Can the polar oceans carry the absorbed carbon away fast enough to not block the process? Would the added plankton stimulate fish and whale numbers in the great Antarctic Ocean? Or would some side effect damage the entire food pyramid? Even if the idea worked, who should run such a program? Additionally, there is some evidence that little of the newly fixed carbon in the Galapagos experiment actually sank. It seems to have come back into chemical equilibrium with the air. Controversy surrounds this essential point; clearly, here is where more research could tell us much.

This much seems certain (and should allay many fears): If we decide to stop the Geritol solution because of unforeseen side effects, control is easy. The standing crop will die off within a week, providing a quick correction.

Costs, too, are easy to figure. There is nothing very high-tech about dumping iron. Martin estimated that the job would take about half a million tons per year. Depending on what sort of iron proves best at prodding plankton, and implementation methods, the iron costs range between $10 million and $1 billion a year. Throwing in 15 ships steaming across the polar oceans all year long, dumping iron dust in lanes, brings the total to around $10 billion. This would soak up about a third of our global fossil-fuel-generated carbon dioxide emissions each year.

Reflecting on Reflectivity

Not all mitigation efforts need take place on land or sea. In fact, the most intuitive approach may be simply to reflect more sunlight back into space, before it can be emitted in heat radiation and then absorbed by carbon dioxide. People understand the basic concept readily enough: Black T-shirts are warmer in summer than white ones. We already know that simply painting buildings white makes them cooler. We could compensate for the effect of all greenhouse gas emissions since the Industrial Revolution by reflecting less than 1 percent more of the sunlight.

A mere 0.5 percent change in Earth's net reflectivity, or albedo, would solve the greenhouse problem completely. The big problem is the oceans, which comprise about 70 percent of our surface area and absorb more light because they are darker than land.

When it comes to increasing albedo, it would be wise to begin the discussion by introducing positive measures that can be easily

understood and are close at hand. Reflecting sunlight is not a deep technical idea, after all. Simply adding sand or glass to ordinary asphalt ("glassphalt") doubles its albedo. This is one mitigation measure everyone could see—a clean, passive way to Do Something.

A 1997 UCLA study showed that Los Angeles is 5 degrees Fahrenheit warmer than the surrounding areas, mostly due to dark roofs and asphalt. Cars and power plants contribute, but only a bit; at high noon, the sun delivers to each square mile the power equivalent of a billion-watt electrical plant.

This urban "heat island" effect is common. But white roofs, concrete-colored pavements, and about $10 billion in new shade trees could cool the city below the countryside, cutting air conditioning costs by 18 percent. Cooler roads lessen tire erosion, too. About 1 percent of the United States is covered by human constructions, mostly paving, suggesting that we may already control enough of the land to get at the job.

From such homegrown solutions, we could make the leap to space. The most environmentally benign proposal for increasing the planet's albedo is very high-tech (and expensive): a massive orbiting white screen, about 2,000 kilometers on a side. Even if such parasols were broken into small pieces, putting them up would cost about $120 billion, a bit steep. We would also have to pay a lot to take them down if they caused some undesirable side effects. (One is certain: a night sky permanently light-polluted, irritating astronomers and moon-struck lovers.)

Using more-innocuous dust to reflect sunlight does not work; it drifts away, driven off by the sun's light pressure. But the upper atmosphere is still a good place to intervene, because much sunlight gets absorbed in the atmosphere on its way to us. Also, measures far above our heads trouble us less.

Other sorts of reflectors at high altitudes are promising. Spreading dust in the stratosphere appears workable because at those heights tiny particles stay aloft for several years. This is why volcanoes spewing dust affect weather strongly. The tiny motes that redden our sundowns reflect more sunlight than they trap infrared.

Even better than dust are microscopic droplets of sulfuric acid, which reflects light more effectively. Sulfate aerosols can also raise the number of droplets that make clouds condense, further increasing overall reflectivity. This could then be a local cooling, easier to monitor than carbon dioxide's global warming. We could perform such small, controllable experiments now. The amount of droplets or dust needed is a hundredth of the amount already blown into the atmosphere by natural processes, so we would not be venturing big dislocations. And we would get some spectacular sunsets in the bargain.

Changing the fuel in a jet engine to burn rich can leave a ribbon of fog behind for up to three months, though as it spreads it becomes invisible to the eye. These motes would come down in rain, not troubling the EPA. For about $10 million, this method would offset the 1990 U.S. greenhouse emissions.

As usual, there are human-centered concerns. The Environmental Protection Agency hammers away at particulate levels, blaming them for lung disorders. Luckily, high-altitude dust would come down mostly in raindrops, not making us cough. The cheapest way of delivering dust to the stratosphere is to shoot it up, not fly it. Big naval guns fired straight up can put a one-ton shell 20 kilometers high, where it would explode and spread the dust. This costs only a hundredth as much as the space-parasol idea. But booming naval guns that rattle windows for miles around are likely to provoke more than a few Not in My Backyard reactions.

Fortunately, there is a ready alternative to dust in any form: jet fuel. Changing the fuel mixture in a jet engine to burn rich can leave a ribbon of fog behind for up to three months, though as it spreads it becomes invisible to the eye. These motes would also come down mostly in rain, not troubling the brow of the EPA. Fuel costs about 15 percent of airlines' cash operating expenses, and running rich increases costs by only a few percent. For about $10 million, this method would offset the 1990 U.S. greenhouse emissions. Adding this to the cost of an airline ticket would boost prices perhaps 1 percent. An added asset is that quietly running rich on airline fuel will attract little notice, doesn't even change sunsets, and is hard to muster a media-saturated demonstration against.

But there are, as always, side effects. Dust or sulfuric acid would heat the stratosphere, too, with unknown impact. Some scientists suspect the ozone layer could be affected. If a widespread experiment showed this, we could turn off the effect within roughly a year as the dust settled down and got rained out. (Smaller experiments should show this first, of course.)

These ideas envision doing what natural clouds do already as the major players in the total albedo picture. A 4 percent increase in stratocumulus over the oceans would offset global carbon dioxide emission. Land reflects sunlight much better than the wine-dark seas, so putting clouds far out from land, and preferably in the tropics, gets the greatest leverage.

Clouds condense around microscopic nuclei, often the kind

of sulfuric acid droplets the geoengineers want to spread in the stratosphere. The oceans make such droplets as sea algae decays, and the natural production rate sets the limit on how many clouds form over the seas. Clouds cover about 31 percent of our globe already, so a 4 percent increase is not going to noticeably ruin anybody's day.

Tinkering with such a mammoth natural process is daunting, but in fact about 400 medium-sized coal-fired power plants give off enough sulfur in a year to do the job for the whole Earth. (This in itself suggests just how much we are already perturbing the planet.) There are problems with using coal: Arguing that *more* air pollution is good for Mother Earth sounds intuitively wrong. Coal plants sit on land, and the clouds would be most effective over the oceans. A savvy international strategy leaps to mind: Subsidize electricity-dependent industry on isolated Pacific islands, and ship them the messiest, sulfur-rich coal. The plants' plumes would stretch far downwind, and the manufactured goods could revitalize the tropical ocean states, paying them for being global good neighbors. The wealthy states would then get their mitigation carried out far from home and far from vexatious neighborhood committees, using labor purchased at low rates. And nobody *has* to take the plants; prices will mediate the demand.

A more boring approach, worked out by the National Academy of Sciences panel, envisions a fleet of coal-burning ships which heap sulfur directly into their furnaces. (Maybe some collaboration would work here. Freighters burning sulfur could also spread iron dust, combining the approaches, with some economies.) The ships spew great ribbons of sulfur vapor far out at sea, where nobody can complain, and cloud corridors form obediently behind. It would be best to use these sulfur clouds to augment the edges of existing overcast regions, swelling them and increasing the lifetime of natural clouds. The continuously burning sulfur freighters would follow weather patterns, guided by weather satellite data.

At first these could operate as regional experiments, to work out a good model of how the ocean's cloud system responds. This low-tech method would cost about $2 billion per year, including amortizing the ships.

The biggest political risk here lies with shifts in the weather. The entire campaign would increase the sulfur droplet content in our air by about 25 percent. Probably this would cause no significant trouble, with most of the sulfur raining out into the oceans, which have enormous buffering capacity. Keeping the freighters a week's sailing distance from land would probably save us from scare headlines about sudden acid rains on farmers' heads, since about 30 percent of the sulfur should rain out each day.

Albedo Chic

The NAS panel found that "one of the surprises of this analysis is the relatively low cost" of implementing some significant geoengineering. It might take only a few billion dollars to mitigate the U.S. emission of carbon dioxide. Compared with stopping people in China from burning coal, this is nothing.

We should not take the 1992 panel report, thick with footnotes and layers of qualifiers, to be a road map to a blissful future. The NAS estimates are simple, linear, and made with poorly known parameters. They also ignore many secondary effects. For example, forests promote clouds above them, since the water vapor they exhale condenses quickly. Those lovely cumulus puffs reflect sunlight. So growing trees to sop up carbon dioxide also increases albedo, á positive feedback bonus. But is that the end of the chain? No, because water vapor itself is a greenhouse gas. Thick clouds absorb infrared as well. If forests respire a lot, they can partially trap their own heat. Understanding this, and calculating it in detail, will take a generation of research.

But perhaps the greatest unknown is social: How will the politically aware public react—those who vote, anyway? If geoengineers are painted early and often as Dr. Strangeloves of the air, they will fail. Properly portrayed as allies of science—and true environmentalism—they could become heroes. Not letting the radical greens set the terms of discussion will matter crucially.

A major factor here will be whether mitigation looks like yet another top-down contrivance, another set of orders from the elite. Draconian policing of fuel burning will certainly look that way, a frowning Aunt Bessie elbowing into daily details, calculating your costs of commuting to work and setting your thermostat level. In contrast, mitigation does not have to push a new camel's nose into our tents. Technical solutions can play out far from people's lives, on the sea or high in the air.

Better, widespread acceptance of mitigation strategies could lead to an albedo chic—ostentatious flaunting of white roofs, the Mediterranean look, silvered cars, the return of the ice-cream suit in fashion circles. White could be appropriate after Labor Day again.

More seriously, every little bit would indeed help. This is crucial: Mitigation wears the white hat. It asks simple, clear measures of everyone, before going to larger-scale interventions. Grassroots involvement should be integral from the very beginning. Local efforts should go apace with those at the nation-state level, especially since mitigation intertwines deeply with diplomacy. Here appearances are even more critical, given the levels of animosity between the big burners (especially the United States) and the tropical world.

Plausible solutions should stay within the NAS panel's sober guidelines. Learning more is the crucial first step, of course. This is not just the usual academic call for more funded research; nobody wants to try global experiments on a wing and a prayer.

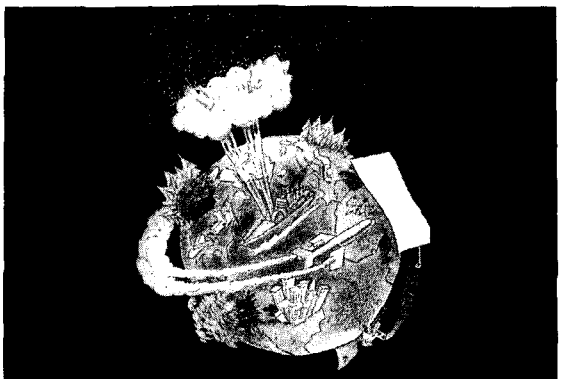
Beyond more studies and reports, we must soon begin thinking of controlled experiments. Climate scientists so far have studied passively, much like astronomers. They have a bias toward this mode, especially since the discernible changes we have made in our climate generally have been pernicious. Such mental sets ebb slowly. The reek of hubris also restrains many. But a time for many limited experiments like the iron-dumping one will come. This will be the second great step as we ponder whether to become geoengineers. Constraints must be severe to ensure clear results.

Most important, perturbations in climate must be local and reversible—and not merely to quiet environmentalist fears. Only controlled experiments, well designed and well analyzed, will be

convincing to all sides in this debate. Indeed, the green plume near the Galapagos Islands showed this. Its larger features were best studied by satellite, which picked up the green splotch strongly against the dark blue sea. But the crucial issue of whether the carbon stayed tied up in ocean waters was poorly addressed. Satellites were of no help. Slightly better funding and more scientists in dispersed, small craft could have told us a lot more.

Careful climate modeling must closely parallel every experiment. Few doubt that our climate stands in a class by itself in terms of complexity. Though much is made of how wondrous our minds are, perhaps the most complex entity known is our biosphere, in which we are mere mayflies. Absent a remotely useful theory of complexity in systems, we must proceed cautiously.

While computer studies are notorious for revealing mostly what was sought, confirming the prejudices of their programmers, methods are improving quickly. They can explore the many side avenues of small-scale geoengineering experiments. Invoking computer models as crucial watchdogs in every experiment will calm fears, at least among those who read beyond the headlines.



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Who pays, in the end? Political pressure may well compel nations to comply with some target goals. A crucial factor will be what ratio to use in assessing a nation's (or region's) rectitude: net fossil-fuel consumption divided by what? Population? This favors the poor and populous nations. Economic value created with the fuels? The United States would fare reasonably well. Some weighted mean between the two?

To avoid descending into pure power politics and making policy sausage in public, a World Warming Authority could copy our fledgling pollution-voucher methods, bringing some market forces into play. But instead of simply trading the right to burn more—a negative unit—one could use a positive Mitigation Unit as well. Industries amassing them by, say, paying for rich-burning jet fuel could then burn more oil themselves. A market-driven dynamic equilibrium could then minimize costs for a given anti-warming target.

Such approaches might drive the emergence of suites of methods, which regions could choose among to their best advantage. Deserts reflect light well (though their roads are usually dark), so added cloud cover is less effective there overall; the whitewashing of cities could be measured by their average decrease in the heat-island effect; lands with high rainfall may favor forestation. Any such policy calculus should hover over the intricacies of markets, which will move faster and with more ingenuity than any committee. Rigid mandates will inevitably fail.

Still, going from the local to the global is fraught with uncertainty—and sure to inspire much anxiety. We will always be ambivalent stewards of the Earth. And greenhouse gas emissions certainly will not be our last problem, either. We are doing many things to our environment, with our numbers expected to reach 10 billion by 2050. What new threats will emerge? Catastrophes may come at a quickening pace, springing from the many synergistic effects that we must trace through the geophysical labyrinth.

As we begin correcting for our inadvertent insults to Mother Earth, we should realize that it's *forever.* Once we become caretakers, we cannot stop. The large tasks confronting humanity, especially the uplifting of the majority to some semblance of prosperity, must be carried forward in the shadow of our stewardship.

And yet, even among the able nations, those who have the foresight to grasp solutions, an odd reluctance pervades the policy classes. As the atmospheric physicist Ralph Cicerone has noted, "Many who envision environmental problems foresee doom and have little faith in technology, and therefore propose strong limits on industrialization, while most optimists refuse to believe that there is an environmental problem at all."

Having sinned against Mother Nature inadvertently, many are keenly reluctant to intervene knowingly. Sherwood Rowland, a chemist at the University of California at Irvine who predicted, with Mario Molina, the depletion of the ozone layer, declared, "I am unalterably opposed to global mitigation." This added considerable weight to the abstention cause. At root, such people see mankind as the problem; only by behaving humbly, living lightly upon our Earth, can we atone. Here most scientists and theologians agree, at least for now.

The next century will see a protracted battle between the prophets who would intervene and the moralists who see all grand-scale human measures as tainted. Even now, many argue that even to speak of geoengineering encourages the unwashed to more excess, since the masses will think that once again science has a remedy at hand.

Some, though, will say quietly, persistently, *Well, maybe science does....*

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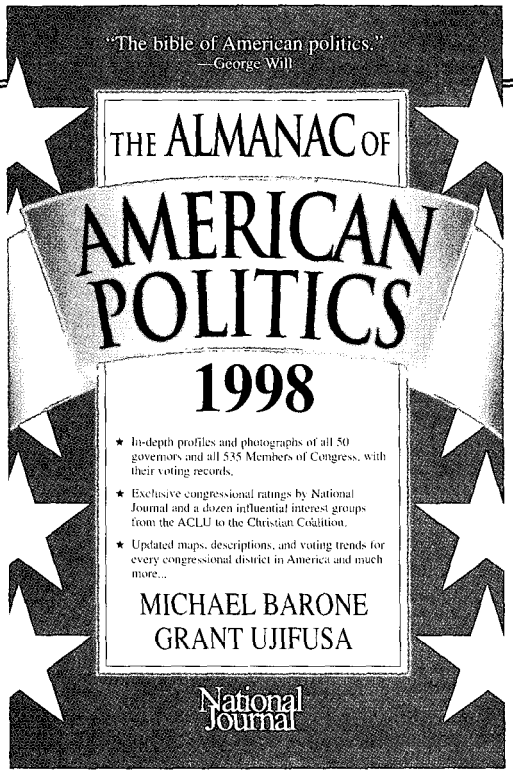
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STAND-UP GUY

Comedian Drew Carey has become a full-fledged media sensation: His self-titled television show, which airs Wednesdays at 9 p.m. EST on ABC, is beginning its third season ensconced in the Nielsen top 20 (and locked in a ratings war with NBC's *Third Rock from the Sun*); his cable specials, most recently HBO's *The Mr. Vegas All Night Party*, command huge audiences; and his book *Dirty Jokes and Beer: Stories of the Unrefined* (for which he reportedly received a $3 million advance) hit stores in September.

Interviewed by Nick Gillespie and Steve Kurtz

Carey's appeal stems in large part from his Everyman status. *The Washington Post* once described him, not inaccurately, as "a tubby dork in a crew cut and thick-rimmed glasses...[who is] lovably and goofily awkward....Part of Carey's charm is that he manages to seem out of place in every setting." In his sitcom, which shares certain blue-collar affinities with shows such as *Roseanne* and *Grace Under Fire*, his character is an assistant personnel manager at a Cleveland department store. He is the consummate working stiff, besieged on all sides by an indifferent employer, hostile co-workers, aimless friends, and a strong sense of his own inadequacy and lack of success. From this potentially grim reality, Carey squeezes immense humor (and precious little sentimentality).

Carey's appreciation for the exasperations of everyday life is matched by a delightful sense of the absurd (his show sometimes features elaborate dance numbers) and an eagerness to strip away all sorts of pretensions and self-serving myths. Consider his take on the Hard Rock Hotel and Casino in Las Vegas and its ubiquitous slogan, "Save the Planet": "[That's] the most pandering corporate slogan I've ever heard," he writes. " 'Save the Planet.' You can't get away from it. It's on every sign, every chip, every matchbook: 'Save the Planet.' Like you can really save the planet from people in the first place, and if you wanted to, you could do it by drinking and gambling at the Hard Rock. 'Hey, not only am I getting shit-faced drunk and picking up cute chicks, I'm saving the planet.'...Every time I play craps there, when I roll the dice I yell, 'Save the Planet!' Then, win or lose, I loudly announce, 'I don't care if I win or not, I just want the planet to be safe,' while I count my hundred dollar chips."

Although Carey openly disdains Hollywood activism—he winces at the mention of people such as Alec Baldwin and Barbra Streisand—there is a proto-political message in much of his humor. As the Hard Rock example suggests, Carey believes that people are far more resistant to soothing, feel-good rhetoric than its practitioners may fully grasp. In an age of ubiquitous and self-serving spin, that is no small point.

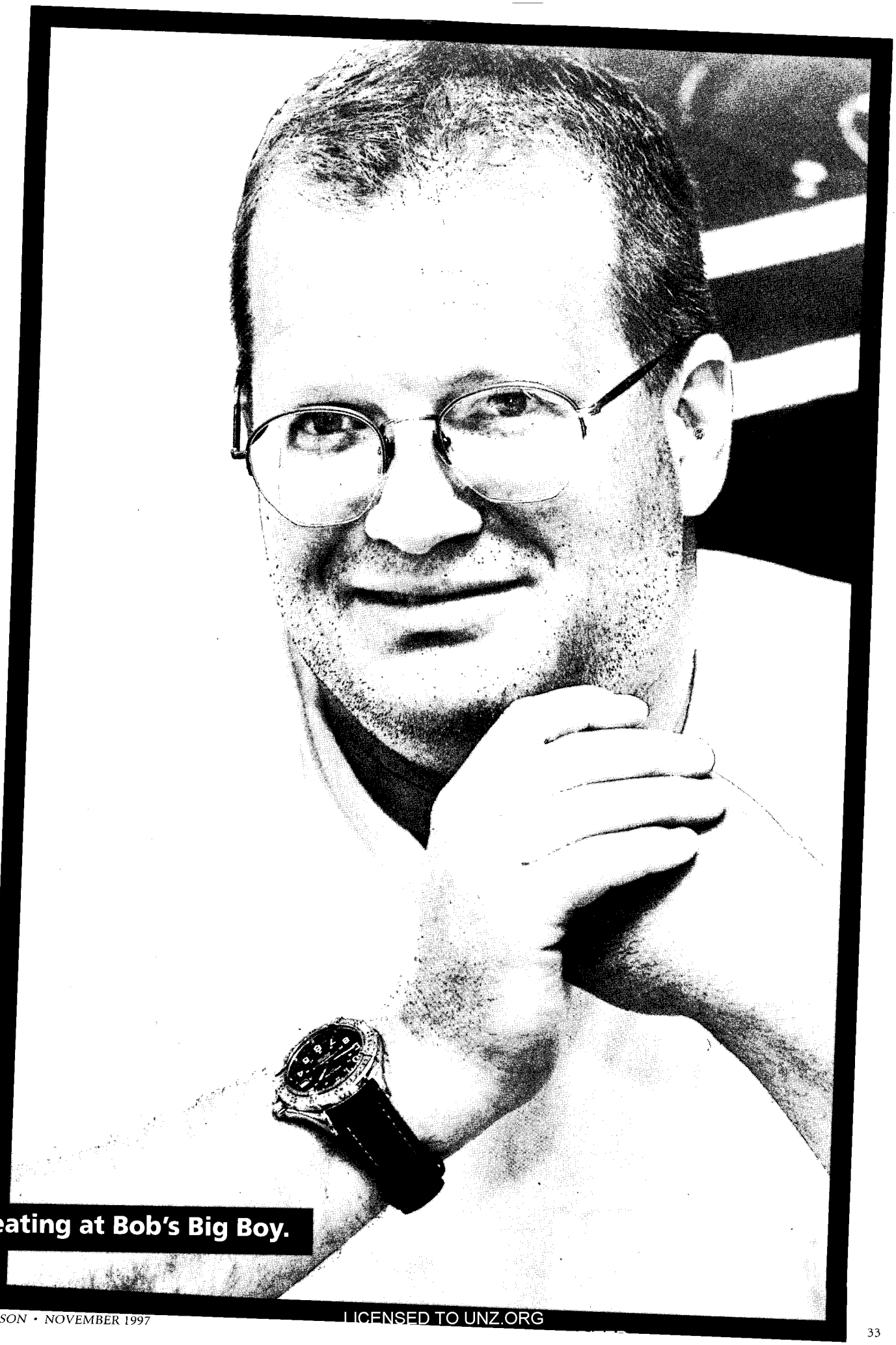
Senior Editor Nick Gillespie and writer Steve Kurtz talked with Carey over lunch at the original Bob's Big Boy (his choice) in Burbank, California. Here's a condensed version of their wide-ranging conversation.

Reason: Much of your humor pokes fun at liberal Hollywood sensibilities. What kind of response does that provoke from your peers?

Drew Carey: People look at me like a drunk uncle: "Oh, that Drew!" Everybody in Hollywood loves symbolic gestures. Have you been to the Hard Rock Casino in Vegas? There's nothing save-the-planetish about it. Hollywood people are filled with guilt: white guilt, liberal guilt, money guilt. They feel bad that they're so rich, they feel they don't work that much for all that money—and they don't, for the amount of money they make. There's no way I can justify my salary level, but I'm learning to live with it.

I've got to say that I don't see myself as some sort of political type like Alec Baldwin or Barbra Streisand. I don't want

Comedian Drew Carey on network censors, Hollywood guilt, and why he



PHOTOS: JONATHAN NOUROK

ikes eating at Bob's Big Boy.

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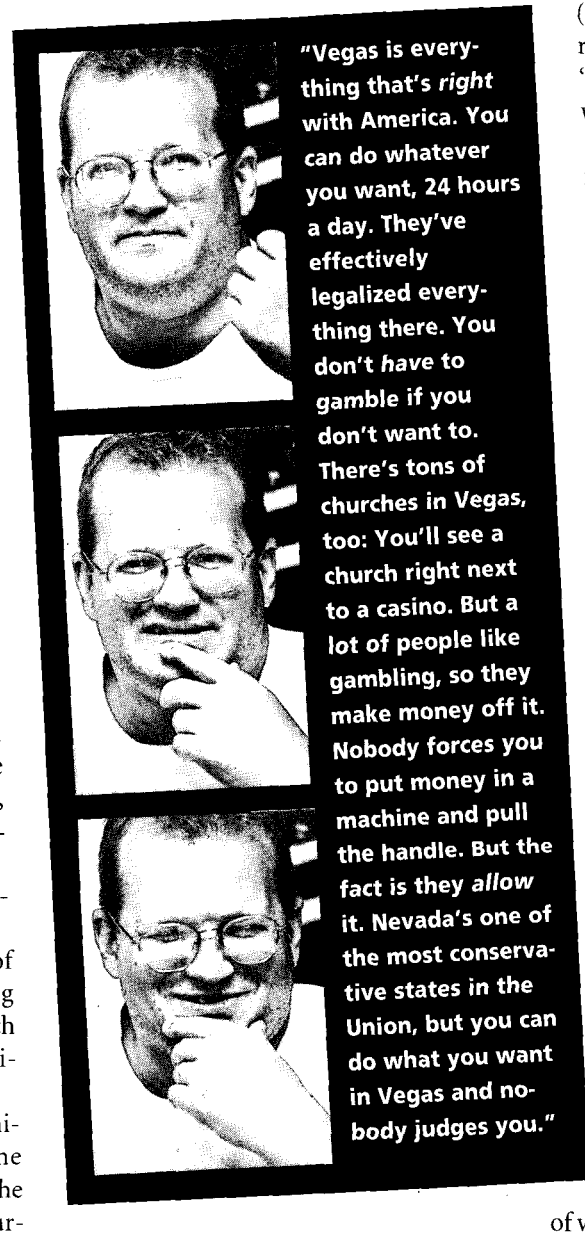
to come across like that. I'd be embarrassed if that was the way I came across. I should watch what I say about Streisand: She could call a congressman, not have my garbage picked up anymore, change my zoning laws, totally screw me over.

When I did Comic Relief, I did it to be on the show; it's a badge of honor as a comedian to do that show. Comic Relief does a lot of good, but homeless people really bug the hell out of me. They're smelly, they're always asking me for money. I mean, I like to help out, but I also do this in my act where I say, "I don't know how much money we raised to help the homeless tonight, but the food backstage was great." And it was: all gourmet-catered, all the drinks were free, not a homeless guy in sight. Everyone in Hollywood comes to these things and then says, "Look how we cured homelessness." They feel guilty if they party and there's not a good reason for it. If you had the same show with all the best comedians and no charity involved, they'd be like, "Uh-oh, can't do that." They want to make themselves look good—a lot of it is about feeding egos. My publicist always calls me with charity appearance requests, and I turn them down now. I told her I'm not doing any more charity where I show up and say, "Hi, I'm Drew Carey for the American Cancer Society."


"Vegas is everything that's *right* with America. You can do whatever you want, 24 hours a day. They've effectively legalized everything there. You don't *have* to gamble if you don't want to. There's tons of churches in Vegas, too: You'll see a church right next to a casino. But a lot of people like gambling, so they make money off it. Nobody forces you to put money in a machine and pull the handle. But the fact is they *allow* it. Nevada's one of the most conservative states in the Union, but you can do what you want in Vegas and nobody judges you."

Reason: So you're in favor of cancer?

Carey: No (laughs). I'm in favor of *not* inflating your ego, of only doing good deeds to pump yourself up. Which is about as anti-Hollywood, as anti-celebrity as you can get.

Still, I wish there were more organizations like [Comic Relief]. Then the government wouldn't step in all over the place. Then you could decide for yourself to help the homeless or not help the homeless.

Reason: What's your basic attitude toward government?

Carey: The less the better. As far as your personal goals are and what you actually want to do with your life, it should never have to do with the government. You should never depend on the government for your retirement, your financial security, for anything. If you do, you're screwed.

Reason: But you were in the Marines reserve, weren't you?—

Carey: That's all the government should be: Army, Air Force, Navy, Marines (laughs). P. J. O'Rourke once said the government has passed enough laws—it should just stop. It oversteps its bounds so often. Giving it a little bit of power is like getting a little bit pregnant, or thinking that a little bit of sex will do you for a long time—it just doesn't work that way.

Reason: Is that the case with TV content ratings?

Carey: I'm not against ratings per se. I think more information is always good. But I certainly don't think the government has to step in and set guidelines for how shows should be rated.

Reason: Former Sen. Paul Simon (D-Ill.), one of the main forces behind ratings, said that if TV people didn't "clean up its act," the government would have to do it for them.

Carey: He's a bowtied prick. What right does he have to tell me what I can and cannot watch? Change the channel if you don't like what's on TV! The government is really into "protecting" people. The FCC says you can't broadcast certain words and certain pictures. It says it's protecting citizens. But I'm sitting in my home with DirecTV and can watch whatever I want. I can afford the best pornography—laser-disc porn! The government's not protecting me from anything.

All the government's doing is discriminating against poor people. It thinks poor people are like cows, that poor people can't think straight: If we let them hear dirty words or see dirty pictures, there's going to be *madness*! If you're poor and all you can afford is a 12-inch black-and-white TV and can't pay for cable—you're so protected! You'd probably be happier if you could see some pornography, a pair of titties, once in a while on free TV. But a pair of titties on free TV? The government figures if you saw that, you'd just explode!

Reason: You devote a chapter of your book to ABC's own network censor, filled with examples of what was and wasn't approved for your show. The focus on particular words is both pathetic and hilarious: In one case, he asked you to change *dwarf* to *little person*; in another, he asked you to substitute *hooker* or *prostitute* for *whore*; in a third, he passed on *butt wipe* but OK'd *butt weasel*.

Carey: People who have read the book have said that's their favorite chapter. You just don't normally get that sort of inside look at the process.

Reason: Do you ever catch the censor cursing?

Carey: Yes, yes: "What the fuck's going on? You can't say that!"

Reason: Would the use of blue language make your television show better?

Carey: There'd be more stuff to joke about, and it would

make the show funnier. As it is, there are certain parts of life you can discuss and certain parts you can't. If my character stubs his toe really bad, he can't say, "Aw fuck, I stubbed my toe!" He has to say, "Ooch, ooch, ooch."

Reason: Why is cursing funnier?

Carey: It's not always. But comedy's all about exaggeration. To do that sometimes you need the strongest words you can use. In the book, I tell this joke about a man and a woman who meet in a bar. They're both divorced because their spouses thought they were too kinky. So they go back to the woman's place and she goes to her bedroom and puts on black leather boots, a miniskirt, comes out with a riding crop and some handcuffs. The guy's putting on his coat and heading out the door. "Hey, where you going? I thought we were going to get kinky," she says. "Hey," he says, "I fucked your dog, I shit in your purse. I'm outta here!" That just isn't funny if you say, "I had sex with your dog and defecated in your purse."

Reason: What do you think about comedians like Bill Cosby who crusade against dirty comics?

Carey: He has a market and I have a market. I don't care if my jokes are appropriate for a kid.

Reason: While you're Cleveland's favorite son, you write longingly of your years living in Las Vegas, a city which many people see as the embodiment of vice and excess, of everything that's wrong with America. What do you like about Vegas?

Carey: Vegas is everything that's *right* with America. You can do whatever you want, 24 hours a day. They've effectively legalized everything there. You don't *have* to gamble if you don't want to. There's tons of churches in Vegas, too: You'll see a church right next to a casino. But a lot of people like gambling, so they make money off it. Nobody forces you to put money in a machine and pull the handle. But the fact is they *allow* it. Nevada's one of the most conservative states in the Union, but you can do what you want in Vegas and nobody judges you.

And they've got great schools in Vegas (laughs).

Reason: So why do so many people dump on Vegas?

Carey: I think a lot of people are afraid of freedom. They want their lives to be controlled, to be put into a box: "Be here at 9, leave at 5, we'll take care of you." People like that cradle-to-grave concept because it says you don't have to think too much, you don't have to worry too much, because someone else is looking out for you. But that also means you can't do as much as you want. You have to do what someone else says is right, what someone else thinks you should do. Why should someone else put a limit on how much fun I can have, how much I can accomplish?

"I think a lot of people are afraid of freedom. They want their lives to be controlled, to be put into a box: 'Be here at 9, leave at 5, we'll take care of you.' People like that cradle-to-grave concept because it says you don't have to think too much, you don't have to worry too much, because someone else is looking out for you. But that also means you can't do as much as you want. You have to do what someone else says is right, what someone else thinks you should do. Why should someone else put a limit on how much fun I can have, how much I can accomplish?"

Reason: You write about the 1970s—something else people heap scorn on—in a similar vein.

Carey: Again, a lot of people don't like people having fun. And the '70s were all about doing as much debauchery and having as much fun as you possibly could: Fuck anybody you wanted, do any drug you wanted to.

Reason: I take it you favor drug legalization?

Carey: Yeah. But every time you bring that up, people always ask, "Oh, you think they should sell heroin and crack in stores?" Sure: Smoke crack, die, get out of my way. As long as I don't have to pay for it (laughs). There's always the argument that not everyone is as responsible as you are, that we have to protect everyone from people who would smoke crack and not be responsible. Like we're doing now, right? Liquor prohibition led to the rise of organized crime in America, and drug prohibition has led to the rise of the gang problems we have now.

Reason: Prohibition also leads to another topic: the Kennedys. In an earlier draft of your book, you had an entire chapter devoted to that brood. What is it that you hate about them?

Carey: There were a lot of questions about language in the book. I said, "Look, give me some of the bad language, and I'll take out the whole Kennedy chapter." Plus, the publisher wasn't sure it would pass the lawyers. I read in *USA Today* that a Kennedy has never lost an election in Massachusetts. I wrote about what it would take for a Kennedy to lose one: They bust into a bank, pistol whip the manager, fuck the teller up the ass, take turns posing for pictures. And nobody would say a thing: "Those Kennedy's are great, aren't they? I can't believe a Kennedy fucked *me* up the ass!" They can get away with anything.

Reason: Your comic persona and TV show successfully blend a working-man shtick and a willingness to play with dramatic conventions and audience expectations. What's the appeal of those things?

Carey: I try not to lose touch with [working people]. I go

back to Cleveland a lot. I love the normalcy of Cleveland. There's regular people there. I like [the TV show] *King of the Hill* because it's about normal people. I *don't* miss the economic insecurity, the living paycheck to paycheck. Twice when I was living in Vegas, I almost lost my rent money playing blackjack, got down to my last two dollars.

I'm glad I don't have to deal with that anymore. But I don't want to lose touch with things like eating in Bob's Big Boy. I feel comfortable here.

The show is very easy to relate to [in that way]. I wanted to do a show based on what my life would be like if I had never become a comedian. I would have had some bullshit degree, some general job, going nowhere. People laugh to forget their troubles, and to forget their troubles they like to look at people who aren't doing better than they are. Nothing's funny about someone who's successful. People who are happy and adjusted just aren't funny. Even when people are rich and successful on TV shows, there's always some trouble—you have to poke holes in them, throw them out of a job, put a pie in the face.

Like I said, all comedy is based on exaggeration, big or small, whatever you can get away with. In a promotional bit for the show, Mimi [a character from the show] and I are walking down a dirt road with fishing poles, like Andy and Opie on *The Andy Griffith Show.* The original script was that she would push me in the water and I'd be floundering like I couldn't swim. When we did the filming, I said, "Wouldn't it be funnier if I just floated like I was dead?" And it's funnier that way because it went the extra mile.

What also helps our show is that we never take ourselves seriously. Here's a show that can wink at itself. Everyone involved knows we're just a sitcom. You'll never see a "very special episode" of the show. The episode featuring Speedy the Crippled Dog is the most we're going to do.

Reason: Your book is different from most celebrity tomes. It's not simply an autobiography or a reprinting of your stand-up routines, although it has some of both. You've got a half-dozen short stories, a section on how the network censor operates, an entire chapter devoted to penis jokes, and then some. How did the book's form come about?

Carey: I didn't want to do what every other celebrity does. I couldn't imagine sitting down and writing my thoughts on the universe. Who cares? Really, who gives a shit what a comic thinks about life in general?

I only wanted to do short stories. I loved the old stories in *National Lampoon,* like the original story the movie *Vacation* was based on. I used to laugh at them until I cried. I like short stories, and I don't think I'm good enough to write a novel (laughs). The publisher was hoping to get Drew on beer, Drew on dating, that sort of thing. I wanted to do the stories, and I wanted to do a chapter on how ABC's standards and practices works. So I gave the publisher some of the other stuff to make them happy. The important thing is that it's all meant to be funny.

Reason: You cast aspersions on celebrities who unveil dark secrets, but you also mention that you were molested as a boy and that you tried to commit suicide during your Vegas years.

Carey: The reason I mentioned that stuff is that I wanted to tell people that you can get over it, that you don't have to be embarrassed by it. I mean, I'm very well-adjusted in real life. Well, pretty well. Most parts, anyway. You could ask my girlfriends (laughs).

What I don't like are celebrities who use it as their crutch all the time, who use it as a calling card: "Hi, I'm fill-in-the-blank and I was molested." Shut up already, man. It's one thing to mention it and move on. I have two pages on being molested when I was 9 in the book, and *The Globe* had this big story: "Drew Carey Bombshell!" They didn't mention one thing about the chapter called "101 Big Dick Jokes."

Reason: You have the only hit show on ABC in recent memory, but you've also been quick to point out that network shows are nowhere near as big as they used to be. Why is that?

Carey: DirecTV, maybe. The network shows are fine; it's just that there's so many other things to watch. We'll never see national shows with 45 shares again. Before, you never had a choice. You had to watch *M*A*S*H,* or whatever was on the three big networks. Now, if I don't come across a regional sports show or a history special I want to watch, *maybe* I'll watch *M*A*S*H,* or whatever's the best of what's broadcast. I don't even watch the local affiliates here in Los Angeles anymore. When I first got DirecTV, the installer told me I needed an antenna to pick up the local broadcast channels. I had him put one in, but I never turn them on.

Reason: How are the networks responding?

Carey: They can't assume everyone is going to watch the new "fall season," that people will tune into something right when it goes on the air. My show was like that. You have to get used to it; some people still don't [like the show], which is fine with me. We had kind of a slow growth in audience. The TV season is a year-long thing now, and the networks are starting to look at it that way, thanks to cable, satellites, and competition.

Reason: A lot of people in your position must hate the competition. Since viewers have more options, they're tougher to hold onto.

Carey: Some people don't like competition because it makes them work harder, better. I'm competitive at everything. When I play poker, I don't like losing the pot. The first Monopoly game I played with my brothers, I hated losing so much, I just had to beat them. I love beating people (laughs). But it's a natural driving force, a way of testing yourself, of measuring how you're doing. It's insane to [hate competition]. How can people not know that competition makes everything better?

Reason: You've got the book out. The show's starting its third season. What's next on your plate?

Carey: I'll tell you what's going to be the most depressing day in my life: when my book gets thrown in the discount bin with a "50 Percent Off" sticker on it. This year, I'm going to try an experiment with my creative process. When the show's in production, we work for three weeks at a time and then take a week off. When I'm working, I'm going to avoid all media. No newspapers, no magazines, no movies, no radio, no TV. I'm just going to do creative work. During the week off, I'll catch up. When I read a headline like "Mideast Talks Stalled by Bombing," I wonder what the hell I could possibly miss: Talk about the '70s! They just keep that headline handy; they probably even just use the same photo.

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SOFTWARE PIRATES

Congress never gave the FDA power to control medical practice. But the agency seized it anyway—by regulating software and computers.

On July 1, 1997, the Food and Drug Administration arrested a laser. The laser belonged to Trevor Woodhams, an eye surgeon in Atlanta who has been practicing for 15 years and runs the Woodhams Eye Clinic. He uses surgical eye lasers, or excimer lasers, to treat nearsightedness and astigmatism. Woodhams built his laser because the existing, FDA-approved models didn't allow surgeons to perform techniques that are state of the art elsewhere in the world. In contemplating how the FDA might respond, he believed he had two things going for him: First, doctors who build one-of-a-kind devices can be exempt from standard FDA regulation if they meet certain criteria, and Woodhams's lawyer had assured him that the "custom device" exemption applied to him. Second, the FDA has repeatedly said it does not regulate medical practice—device manufacturers, yes; doctors, no.

Which is why Woodhams was a bit surprised in mid-1996, soon after he built his laser, when the FDA told him the custom device exemption didn't apply to him and that, as a regulated device manufacturer, he was violating the law by making and using an unapproved device. To get FDA approval for a device, you need to do studies, and to do studies, you need an investigational device exemption (IDE). Woodhams didn't agree that he was subject to FDA regulation in the first place, but the FDA had more money and more lawyers. "As a private practitioner, I didn't have the resources to fight the FDA on this," he says, "and I figured it was probably better to go along with them."

Woodhams sent in his IDE application in the spring of 1997. The FDA turned him down, as it often does when it's not convinced of a product's safety or efficacy. Many of the FDA's objections stemmed from disagreements over what sort of surgery is acceptable—disagreements bordering on the forbidden territory of medical practice. The FDA also wanted Woodhams to do "profilometry studies," which basically amount to testing the laser on plastic and having the plastic analyzed to make sure the laser and the computer inside it are really doing what they're supposed to be doing. Woodhams didn't think this was necessary—the two companies whose lasers were already approved for the same techniques had never been asked to do profilometry studies—but he sent for the tests anyway.

The FDA told Woodhams not to treat any patients until the IDE was approved and to limit himself thereafter to practices approved in the IDE. He agreed to follow the IDE protocol but said he wouldn't stop treating patients while waiting for IDE approval: It would hurt him financially; he had been doing the procedures for years with full disclosure and without harming patients; and he had patients who were relying on him, some who needed touch-ups, others who'd had one eye operated on

BY ALEXANDER VOLOKH

and who needed the same work done on their second eye. Woodhams told the FDA he would work with it and submit a revised IDE application.

Then a marshal showed up at his office and put his laser under arrest. "They didn't move it or fiddle with it or chop it up," Woodhams says, "but they put a big sticker on it that said no one could touch it, under order of the U.S. marshal." He called his contact at the FDA. "I thought I was working with you and we were close to a resolution," he recalls saying. "Why was this done?" He asked whether he should send in his revised IDE application as soon as he got the results of the profilometry studies, or submit the incomplete IDE application and send the profilometry results later. The contact wasn't sure whether an IDE was even possible now. After all, Woodhams had no laser.

The enforcement action against Trevor Woodhams was one of the first in a series. The FDA is now actively seeking out doctors and manufacturers who make excimer lasers without the agency's permission. The FDA thinks of this as nothing new; it's been enforcing the Food, Drug, and Cosmetic Act against recalcitrant manufacturers for years. But the excimer laser controversy raises fundamental questions about the FDA's mission. Despite the reformist zeal of the 104th Congress, and despite the resignation of activist Commissioner David Kessler, the FDA's power is expanding, even without new laws or regulations. The key to this expansion is the evolution of technology and the FDA's regulatory control over software products.

Once upon a time, there were drug and device companies, which were subject to FDA regulation, and doctors, who were shielded by the FDA's inability to regulate medical practice. Back then, it was easy to tell which was which. But times change. Today, medical devices are no longer simply physical tools; increasingly, they are technologically savvy gadgets with sophisticated software that can interact with patients, diagnose diseases, and administer treatment. The manufacturer can almost be seen as a second doctor. As technology brings drug and device companies into the realm of medical practice, it brings medical practice closer to the jurisdiction of the FDA. Without any changes in the law, the FDA's purview is growing.

The FDA, which has been regulating food and drugs since the turn of the century and medical devices since 1976, has tried to regulate software since the mid-1980s. If you are asking yourself how software can be a medical device, the FDA has anticipated your question. "Well, you may be asking yourself, how can software be a medical device?" said Dr. Bruce Burlington, head of the FDA's Device Center, during a software policy meeting at the National Institutes of Health in September 1996. According to the law, a medical device is an "instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or related article, including any component, part, or accessory ...intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, or intended to affect the structure or function of the body."

No one was thinking of software in 1976, when the Food, Drug, and Cosmetic Act was amended to cover medical devices; the FDA came to device regulation not because of bad software but because of defective IUDs. But with a definition that broad, all software used for medical purposes, or used to make a medical device, is presumed to be a device, and subject to regulation, unless the FDA specifically exempts it. This can include the software in pacemakers, systems that track blood donations, expert programs to evaluate X-rays, even databases of medical literature that aid doctors in determining prescriptions. It can also include the software that controls excimer lasers. Call us "the Food, Drug, and Software Administration," Burlington pleasantly suggested. "As we sit there and look at our floppy disks and try to figure out what to make of them, it is a conundrum for us."

So far computers in medicine mainly have been used to control devices, but Dr. Harry Burke, an assistant professor of medicine at New York Medical College, thinks their use will expand

Atlanta eye surgeon Trevor Woodhams sits in front of the excimer laser he built. It was "arrested" because the FDA doesn't consider it a custom device.

JAY PECK

dramatically. In the future, he says, medical software will deal with pattern recognition, risk assessment, diagnosis, and medical data management—for instance, programs that read Pap smears to determine which slides need human review and which don't. "This is a gigantic area," Burke explained at the NIH conference. He predicts that if the FDA takes an expansive view of what software can be considered a "medical device," new medical software applications will outnumber new drug applications in 10 years, and will be "an order of magnitude greater" in 20 years. "Regulating all of this domain is obviously impossible," he says.

Impossible or not—and for better or worse—the FDA claims jurisdiction. When Intel announced the mathematical flaws in its Pentium chips, the FDA made all device manufacturers using Pentiums do a safety analysis on their products and take "appropriate mitigating steps" so the chip's problems didn't affect the devices. Blood banks have also been affected. Blood bank management software is used to track units of blood from the time of donation. It keeps a record of testing results, remembers the donation time of each unit to avoid giving someone spoiled blood, keeps track of the blood center's entire inventory, and records whether any adverse effects were observed from a transfusion. Since the late 1980s, blood banks have had to make sure their computer systems comply with "good manufacturing practices" (GMPs), a set of vague FDA recommendations. Vendors of blood bank management software have to get FDA premarket clearance and are subject to inspections if the FDA thinks their software could have contributed to the release of tainted blood.

Preventing the use of unsuitable blood is, of course, all well and good. Leonard Wilson, chief of the FDA's biologic devices branch, points out that HIV-positive blood can kill a recipient within several years, and a mismatch between AB and O blood can kill a patient within 15 minutes. In fact, the FDA became an active blood cop only after being browbeaten by Rep. John Dingell (D-Mich.) several years back about injuries caused by bad blood-bank software.

But the FDA has created some bad blood of its own because of its approach to regulation. The Health Industry Manufacturers Association has called the regulatory process a "very, very long and arduous operation for blood bank systems vendors"; the Red Cross and the American Association of Blood Banks agree. Blood management software manufacturers find they can't submit the new version of their software to the FDA, because the agency, never one for haste, hasn't approved the old version yet. Knowing the hoops they'll have to jump through, software manufacturers are less inclined to enhance their products in the first place. One blood expert, noting "the dearth of modern freestanding software in blood banking," has forecast "doom for quality software" unless regulations are relaxed. That may be a bit hyperbolic, but this is *blood* we're talking about. Blood banks use software to reduce human error by automating or verifying manual processes. Better software improves the blood supply; slowing the process down could cost lives.

The FDA disputes the industry's complaints. "While we do have some software that has taken a long time to clear, we did clear one package in 22 days," Wilson recalls. "We felt very good about that. That doesn't get in the way of any innovation at all." Still, even low-risk device approvals often take a long time, in many cases exceeding the maximum set by the law. At any rate, since blood bank regulation has never been subjected to a cost-benefit analysis, there is no way of knowing whether, on balance, hazards associated with blood have been reduced; if so, by how much; and at what price.

No one was thinking of software in 1976, when the Food, Drug, and Cosmetic Act was amended to cover medical devices; the FDA came to device regulation not because of bad software but because of defective IUDs. But with a definition that broad, all software used for medical purposes, or used to make a medical device, is presumed to be a device, and subject to regulation, unless the FDA specifically exempts it.

The effects of software regulation are as pervasive as the use of medical software itself. Dr. Martin Weinhous, chief medical physicist in the radiation oncology department at the Cleveland Clinic in Ohio, once used a software program developed by another medical physicist to set up patients for breast cancer X-ray therapy. In X-ray therapy for breast cancer, the affected tissue can be irradiated from three different directions, and to avoid overdosing or underdosing the patient, the doctor has to be sure that there are no gaps or overlaps of the X-ray beams. Once the doctor knows which treatment machine is to be used, and what the patient's measurements are, he can figure out where the patient should be positioned and how the beams should be directed. But this calculation, when performed manually on a calculator, is tedious, error-prone, and time-consuming, taking up to half an hour. The software shortens the calculation to one or two minutes. The program got FDA clearance, Weinhous wrote in a paper delivered at the NIH conference, but as it evolved, "the FDA began to require more of its creator. Eventually, the FDA required that [the developer] test his software tool against every possible PC and Macintosh configuration, even though the inherent risk is small. Faced with un-

realistic GMP requirements, he ceased manufacturing of the device. So we in radiation oncology have no choice but to continue to use a less sophisticated and more error-prone method."

Software developers also feel the costs of FDA regulation. Frank Houston, a software validation consultant with Taratec Development Corp. in Bridgewater, New Jersey, tells the story of a company "who shall remain nameless" that sells software to keep copies of medical images for insurance purposes. Insurance adjusters use the pictures when deciding whether a claim was justified, but because an X-ray scanned into the computer isn't as good as the original X-ray, doctors are advised not to use the computer images to diagnose disease. In fact, the software constantly displays on the screen, "Not approved for diagnostic use." After about two hours of telephone calls to various parts of the FDA, Houston and the company decided the program might qualify to escape regulation. But the gray areas of device regulation are large enough that they decided they'd better file for FDA clearance anyway. The manufacturer spent weeks preparing the documentation, and the FDA has been sitting on it for a year. All this "for a product," says Houston, "that, in the end, lacks any significant risk to health. Something's wrong with this picture."

All this should have been expected. Software, unlike most physical devices, evolves rapidly and is sometimes changed daily, according to the user's needs. The FDA, on the other hand, takes its time. It began talking about software regulation in 1985. The first written draft policy came out in 1987 and was revised in 1989. Once the guidelines were finally out, the floodgates did not open; the approval process is inherently unsympathetic to quick innovation. The most routine form of FDA approval for low-risk devices is called the "510(k)" or "premarket notification," and it is reserved for products that are "substantially equivalent" to those already on the market. Imagine telling a software developer that to be easily introduced into the U.S. marketplace, its product had better be the same as or based on an existing program. "It's patently obvious that any agency that requires congressional approval is not going to move faster than market-driven technologies," says Avrohom Gluck of Neuromedical Systems, a Pap smear screening device company in Suffern, New York. "The agency has been, and still is, severely handicapped in that they need to regulate in the face of many in both government and industry who understand neither the technology nor the quality systems needed to ensure public safety."

It doesn't help that software is not like drugs or even like most traditional devices. Drugs are approved for "safety and efficacy" in treating particular diseases. But this is less true for devices, and much less true for software, which is often used for many different tasks. Nancy George, of Software Quality Management, a Towson, Maryland–based consulting firm that assists companies with regulatory compliance, describes a device that lets patients do their own testing at home, collects and transmits data 24 hours a day, makes video home visits, generates hospital-like charts, and even teaches the patient. "It does everything but serve coffee," George explained to the FDA. "Is it record keeping? Is it training? Is it telemedicine? Is it critical?" Concludes Harry Burke, the New York Medical College professor, "Really, what we've got is a can of worms. I mean, it could get really dicey here if we're not careful."

Because software evolves rapidly and has 1,001 different uses, it is particularly easy to stifle through regulations that are just a bit too inflexible. And because software changes constantly, it is never perfect, though it is often vastly superior to the manual, paper-based processes it is meant to replace. Imperfection has never sat well with the FDA, which gets a great deal of bad publicity if something it approves hurts someone but none at all if someone dies because of regulatory delay. Accordingly, the FDA dreams, in the words of T.S. Eliot, "of systems so perfect that no one will need to be good."

After 12 years of software regulation, the FDA admits that its efforts have "not been completely successful." FDA officials have toyed with regulating software differently according to whether it's in source code or executable code. As anyone who knows anything about software could have told them, source code can be easily converted into executable code, so that distinction makes no sense. The FDA has also tried to regulate software differently depending on whether it's distributed for free or for profit. Such a distinction has nothing to do with risk, which is the only conceivable justification for the FDA's existence. The FDA is now trying to reinvent its software regulations. The rules are in flux or, as one NIH conference participant put it, "loosey-goosey."

While software regulation may be loosey-goosey, there are certain constants in the FDA's approach. One of them is the agency's ongoing crusade against "off-label uses" of drugs and devices. Drugs and devices are approved and labeled for particular uses. The FDA doesn't just approve, say, AZT or excimer lasers. It approves AZT for the purpose of treating patients with HIV, or excimer lasers for the purpose of performing certain procedures to correct nearsightedness. Drug companies can advertise and label approved drugs only for approved uses. But once a drug is approved, a doctor can prescribe it for any use, on- or off-label. The FDA hates that. What's the use of demanding clinical trials proving a drug's efficacy in treating a particular condition if a patient can then go and take the drug for a different condition?

The FDA has a long history of fighting off-label use of medicines. When Congress passed the 1938 Food, Drug, and Cosmetic Act, it made it clear that once a drug was approved, consumers could buy it over the counter, with or without a prescription. Disregarding Congress's intent, the FDA carved out a category of drugs that are available only by prescription, and it tried to limit doctors' ability to prescribe drugs for uses not approved by the agency. In 1951 Congress upheld the prescription-only rules but reaffirmed that the FDA couldn't control what doctors prescribe. Even in 1962, when the FDA was given sweeping new powers over drugs, Congress stressed that the agency could control consumers and manufacturers but not doctors.

Congress attacked the FDA anyway in 1971 for not doing more to protect consumers from off-label uses of prescription drugs. In 1972, the FDA proposed criminalizing off-label prescriptions. The FDA's creative theory was that prescribing a drug

for unapproved uses adds to the drug's "label"—a metaphysical construct that goes beyond the paper wrapped around the bottle—and since the new "label" has no instructions for the new use, the drug is then "misbranded." And naturally, there's no way to fix the (real) label to reflect the new use, since only FDA-approved information can go there. Doctors protested, arguing that off-label prescription is fundamental to sound medical practice. The FDA backed down. To this day, once a drug is approved, it is up to the doctor and patient to use it properly.

Excimer lasers are now caught in the off-label controversy. They have been approved for phototherapeutic keratectomy (PTK), which is used to treat diseased, scarred corneas. They have also been approved for photorefractive keratectomy (PRK), but only to treat certain degrees of nearsightedness and some forms of astigmatism. In other countries, the best refractive surgeons use PRK to treat farsightedness and a wider variety of astigmatisms. These surgeons also use excimer lasers to perform a procedure called LASIK (laser-assisted in situ keratomileusis), which is essentially the same as PRK but performed inside the cornea instead of on the surface. Many surgeons prefer LASIK to surface PRK because it can lead to less regression and scarring. The FDA only recently (in July 1997) gave its final, conditional approval to LASIK.

Because software evolves rapidly and has 1,001 different uses, it is particularly easy to stifle through regulations that are just a bit too inflexible. And because software changes constantly, it is never perfect, though it is often vastly superior to the manual, paper-based processes it is meant to replace. Imperfection has never sat well with the FDA.

If excimer lasers were drugs, doctors would not care that these other uses were not approved. They would simply buy the drug and use it for whatever purpose they thought best. But excimer lasers are not drugs. They are devices that include software, and the software itself is considered a device. John Calfee, an economist at the American Enterprise Institute, explains the implications: "Imagine that the oncologist using a combination drug therapy uses a computer-controlled device to administer the drugs. Suppose the computer software determines all dosages, and does so according to settings provided by the physician. Now suppose that when the FDA approves the drug-administration device for marketing, it also approves the software in every detail. If the FDA forbids physicians or others from reprogramming the device, it could effectively tell doctors how to administer the drug and could even exercise considerable control over which kinds of patients receive the drug and even which illnesses are treated."

Consider how this sort of thing happens with excimer lasers. Only two companies are approved to sell excimer lasers in the United States: Summit Technology of Waltham, Massachusetts, and VISX of Santa Clara, California. When the FDA approved Summit's and VISX's excimer lasers, it mandated that the machines be activated by a keycard, available from the companies, that allows only approved software to be loaded. These keycards, which cannot be used more than once, cost $250 per operation and are available only from the laser manufacturers. The $250 royalty goes to a company called Pillar Point Partners, which is owned by Summit and VISX. In effect, the FDA has not only established a duopoly, in which Summit and VISX are the only companies allowed to manufacture excimer lasers, but has also enshrined a royalty payment system as part of the approved laser design. Some suspect the FDA is in the pockets of the laser manufacturers, but the FDA's explanation is also plausible: This is a convenient way to restrict the software that can be used with the lasers. As long as correction of nearsightedness and some forms of astigmatism are the only approved uses for the laser, the keycards will allow you to load software only for those procedures.

The FDA claims this is not regulation of medical practice. Using an approved device for an unapproved use is medical practice, but using an unapproved device is just illegal, and always has been under the FDA's device approval authority. The laser-plus-nearsightedness-software is an approved device; the laser-plus-farsightedness-software is an unapproved device. FDA software restrictions, therefore, are entirely appropriate. Says FDA spokeswoman Sharon Snider, "If a product can't be used any other way because that's all the software is programmed for, that's all [the doctors] can use it for. That has nothing to do with FDA restricting the practice of medicine."

Nothing to do with restricting the practice of medicine? Only if you're fixated on technical definitions. Regulating the choices of medical practitioners means restricting the practice of medicine, whether it's called "off-label use" or "using an approved laser with unapproved software." The software, by FDA approval, sets the treatment area at a diameter of six millimeters, though this may not be the best size for all patients. Also by FDA approval, the software will not allow a doctor to change the curvature of the eye by more than six diopters, a limit that would exclude people with the worst cases of nearsightedness. This is not restricting the practice of medicine?

Imaginative doctors can get around some of the restrictions. Operating on eyes with the LASIK procedure was possible (but far from ideal) before LASIK was approved, though companies couldn't advertise that fact and doctors couldn't load LASIK software into the laser. Also, it's possible to change the curva-

ture of the eye by more than six diopters by running the program twice, though this, too, is not ideal: It costs twice as much, since it requires two keycards, and the patient has to sit there with an exposed eye while the machine is configured a second time.

But even the most imaginative doctor's options are limited by the available software. Treating farsightedness, for example, is extremely difficult, though not unheard of. "I think you have to be a pretty brave, committed soul to do some of these new and innovative things, what with the FDA looking over one shoulder and the plaintiffs' attorneys looking over the other," says Trevor Woodhams. Dr. Stephen Trokel, who spoke to an FDA panel in July 1996 on behalf of the American Society of Cataract and Refractive Surgery, reported that "the current micromanagement by the FDA of innovations in refractive surgical technology encourages 'offshore' investigations, encourages the movement of patients to foreign surgical centers, encourages the proliferation of unregistered, noncommercial, and totally unregulated lasers, and, most importantly, encourages the development of combination surgery where arcane and untested, imaginative mixtures of surgical techniques are created to overcome FDA labeling."

Trokel's warning is neither speculation nor hyperbole. Vagueness and inconsistency are hallmarks of FDA eye laser policy. It doesn't take a refractive surgeon to recognize this, though many refractive surgeons have firsthand experience in the matter. Because small details change the most and are the hardest to get a handle on, the desire to regulate small details will lead to a constantly shifting legal regime, with FDA interpretations changing unpredictably based on ever-changing medical technology. Many doctors and manufacturers don't know whether they're covered by the law. Some doctors who feel their medical practice is being restricted by the software lockouts have taken to reimporting "gray market lasers"—lasers made by Summit and VISX for export, which neither require royalty keycards nor have the software lockout. Others, like Trevor Woodhams, have created "black box lasers" or "garage lasers"—basically, homemade lasers, constructed out of readily available components.

The FDA believes these lasers do not fall under the "custom device" exemption. "A custom device basically is a product made for use on one person," says the FDA's Snider, echoing the definition easily found in the Code of Federal Regulations, Title 21, Part 812, Section 3, Subsection (b)(5). Once you use the laser on multiple patients, she says, "there's no way that would be considered a custom device." Some doctors point out that since a laser's software must be reconfigured with the statistics of each patient, the devices—the hardware-plus-software combinations—really are individualized.

Woodhams, whose laser is under arrest, feels the FDA has treated him unfairly. He invested $350,000 in his laser and is still paying off the bank loans. Now he has to take his patients to an outside surgery center, which is inconvenient and requires him to pay the $250 royalty to Pillar Point Partners. The Summit and VISX lasers can treat a smaller range of conditions than Woodhams's own laser, which is why he built it in the first place. He had been getting customers turned away by other eye surgeons; now he, too, has to turn those customers away. The FDA enforcement action has doubled his costs per operation. "I felt like I was dealing in good faith in a gray area," he says. "I felt like they did not return the same good faith in their treatment of me."

Besides making unwitting criminals out of justifiably confused doctors, the irrationality of FDA policy encourages doctors and manufacturers to evade the law. Some surgeons have been buying lasers from unapproved manufacturers. On June 11, the FDA requested that U.S. marshals seize nine excimer lasers made by Photon Data of Winter Park, Florida. Surgeons were using Photon's lasers for PRK to treat nearsightedness. The offending equipment, which had a combined estimated value of more than $3 million, was seized at two Photon Data locations and at a private freight forwarder. Dr. Jui Teng Lin, the company's president, did not return my phone calls, but Woodhams, who knows of Lin's outfit, says Lin was building excimer lasers using the very newest technology, selling them to individual practitioners in the United States and abroad, and helping his domestic customers get investigational device approval from the FDA. "Personally," Woodhams says, "I don't think there was anything objectionable with what he was doing."

The FDA's Snider says neither Photon's nor Woodhams's lasers have been linked to any injuries, though the agency has received unsubstantiated reports of injuries related to laser eye surgery and is trying to learn more. In short, the FDA showed that it cares about hypothetical patients who might be hurt if the lasers remained in use, but it showed no consideration for the patients who could have been helped. The FDA did not show that it prevented harm, on balance, by seizing Photon's lasers, and the law does not require it to do so.

In a sense, what the FDA is trying to do now was contained in its mandate from the start. We just didn't know it at first, because limited technology made the scope of the FDA's power seem smaller than it really was. Now we know. As AEI's John Calfee puts it, "FDA regulation expands even when it seems to be standing still....It is now clear that in the absence of new legislation, the FDA of tomorrow will be more inclusive and more intrusive. To regulate more, the FDA does not need to expand its regulatory domain. It can preside over a spontaneous explosion in regulation, confident that expanding medical technology will move more and more of medical technology and medical practice into the boundaries of FDA regulation."

For years, both critics and supporters of the FDA have assumed that deregulation would reduce the agency's power. "Well, in *our* country," they figured, as Alice told the Red Queen in *Through the Looking-Glass*, "you'd generally get to somewhere else—if you ran very fast for a long while as we've been doing." The Red Queen's answer suggests the truth may be more complex than that: "A slow sort of country! Now, *here*, you see, it takes all the running *you* can do, to keep in the same place. If you want to get somewhere else, you must run at least twice as fast as that!" And so it is with FDA reform. The FDA must shrink just to stay the same size.

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Computer Games

The crime of Internet subsidies

By James V. DeLong

The Internet is a wonderful tool. Say you want to write an article on the role of criminal sanctions in the plan to subsidize Internet connections for schools and libraries. Without leaving an air-conditioned study you can download the Telecommunications Act of 1996, the 824-page Federal Communications Commission Report and Order implementing it, and a deluge of backup material.

Because the Internet is so useful, the idea of subsidizing educational connections to it seems like a Great Idea to Make the World a Better Place. As with most such ideas embraced by the government, debate over the policy was superficial, and schools and libraries now gleefully anticipate $2.25 billion a year in subsidies. But their thirst for loot has led them into a danger zone. Government subsidy programs come with tangled strings of conditions and regulations. These are enforced by sanctions, including not only criminal fines and jail terms, but also civil monetary penalties, punitive damages, hefty remedial payments, and asset forfeitures. Many of these are not formally "criminal," but a "civil" penalty of $10,000 stings just as much as a "criminal" fine.

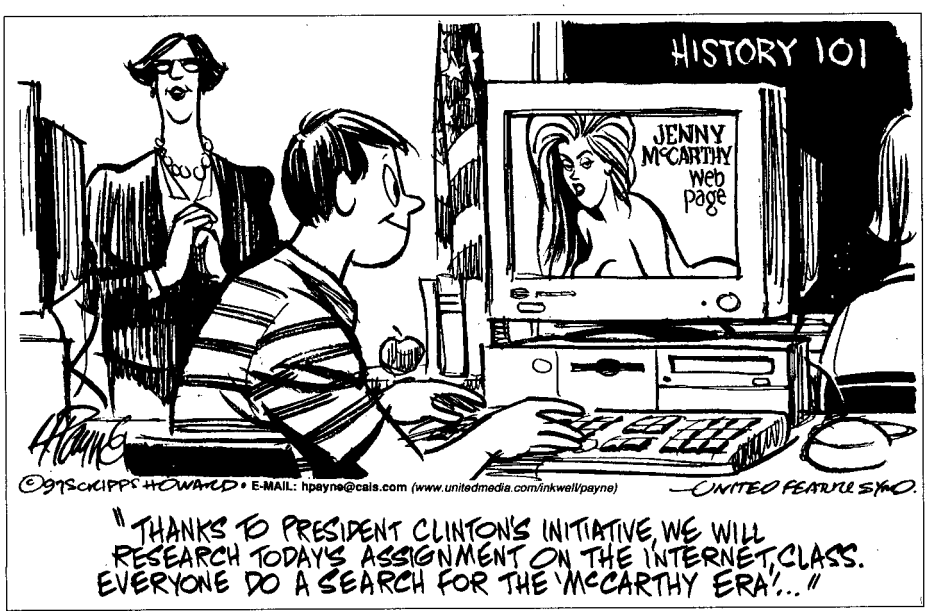
The schools and libraries aren't worried, remaining confident of their own probity. But they should be worried. A growing number of middle-class managers, professionals, entrepreneurs, and land owners are finding themselves in trouble as a result of their participation in government largess. Medicare is a prime example, as the political pressure to hold down "fraud and abuse" makes the government downright grumpy. Doctors at 125 teaching hospitals are in jeopardy from audits for Medicare fraud. Two hospitals already audited have been nicked for $42 million in repayments and fines. Some hospices are also in trouble for collecting Medicare payments for patients who then stayed alive longer than the six months the government allows for terminal illness.

Other programs follow the same trajectory. Savings and loan executives profited for years from government restrictions on competition and other benefits, then got bitten by the hand that fed them. Over 6,000 executives and owners were charged with crimes in the fallout from the S&L mess, including 3,700 who went to jail, despite estimates by Bert Ely, the recognized guru of finance in Washington, D.C., that only about 3 percent of the losses were due to fraud.

The basic idea of the Internet subsidy program seems simple. The part of the law creating it is short, about a page. It says that telecommunications carriers, "upon receiving a bona fide request," must provide services to schools and libraries for educational purposes at a discount specified by the government. The carrier then treats the discount as an offset to other obligations created by the act. The law gives the FCC rule-making authority, specifies that the services provided may not be resold, and excludes for-profit schools and those with endowments of more than $50 million.

Passing a general statute is easy, but the real work of implementation is up to the FCC. The initial FCC Report and Order on this program runs 86 densely written pages—and that's only the beginning. Soon these initial texts will become thickly crusted with interpretations, caveats to the interpretations, amendments, reversals, exceptions, court cases, and informal guidance. Hot lines for advice will be set up, staffed by summer interns and 22-year-old English B.A.'s willing to work cheap.

People who have not dealt with regulatory programs don't fully comprehend how complicated and difficult the process becomes. It helps to look at the statute with an implementer's eye, dreaming up questions that must be answered: What is a bona fide request? What is a school? What is a library? What do you do with a library that is a sub-unit of a non-eligible school, such as a college? What if a college spins off its library into a free-standing corporation—does that render it eligible? What about a consortium of libraries, some of which are eligible and some not? Or a consortium of schools? Or of both? What is an endowment of $50 million—does this include the value of a school's land and buildings, and, if so, must the real estate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be priced to market? What are "educational services"? If a student uses the Internet connection to look at pornography or to run a business on the side, is his school liable for refunding the discount? Does his action taint the school's entire discount, or only that part of the service fairly allocable to the violation? If it is allocable, do you allocate by full cost or variable cost?

Does a library violate the provision against resale of the service if a student works part time for a private company and uses a library Internet connection at night to do paid research? What if the library doesn't know what the student is doing—does that matter? Can the carrier insist that a school police its students to be sure they do not look at *Penthouse* (except to read articles on free speech, of course) and do not resell the service? Can other schools and libraries insist on policing, on the ground that the total subsidy is capped at $2.25 billion, so if one school diverts services to noneducational uses other schools may be deprived?

These are not abstract issues. Every one of them must be addressed, and this list is a bare start. The FCC has reached some initial conclusions. For example, a college can indeed spin off its library into an eligible entity, and carriers must grant a discount on the cost of wiring individual classrooms within a school, not just on the cost of connecting to the wall of the building. (After all, says the commission, the president said that we should wire 2 million classrooms, not just schools. This closes the inquiry into whether this policy makes sense.) The FCC has also established a schedule setting six different levels of discounts depending on the economic need of the locality, and decided that the applicable level should be self-certified by the school or library. Other questions are answered as well, but there is still a long way to go, and every answer will raise new questions.

The commission rules resolving these issues—or leaving them maddeningly uncertain—are criminal statutes. It says so right there in Title V of the act. Anyone can be fined and jailed for one year for "willful and knowing" violations of the act or of FCC rules. Anyone who "willfully or repeatedly" violates rules is also subject to civil penalties, which can be imposed by the commission itself under procedures and standards of proof looser than those applicable in courtrooms. For schools and libraries, the penalties can go up to $10,000 per day for a continuing violation. Carriers and others who are in the business face considerably higher civil penalties.

This blend of command-and-control, subsidies, and enforcement through serious penalties guarantees future trouble for the schools and libraries. By now we have enough experience with this blend that the result has a certain inevitability. Judging by the history of other regulatory programs, details will soon proliferate to the point where no one can fully understand the rules. Even the most honest beneficiary will find it difficult to judge what he must do. For many, the transaction costs of figuring out the program's requirements will outpace its benefits. As a result, they will try to use common sense—a treacherous guide in any regulatory program. Even seeking official help is often little *real* help. If the English B.A. at the other end of the hot line tells you a bureau letter interpreting a commission rule defining a statutory term means *X*, are you bound? Is this The Law? Probably, but there is no clear legal answer.

Initially, the FCC is likely to spend little to enforce the provisions of this program, given all the other demands on its resources, and given that the commission does not really care about the details now that the public relations harvest has been reaped. That might seem good for schools and libraries. But if you cannot get an answer to a question, and it seems unlikely that you will be caught if you err, the obvious course is to make doubtful calls in your own favor.

Eventually, someone will go back and re-examine these decisions, especially if the total resources for the program get squeezed. Then you can be in deep trouble. Because of limited resources for enforcement, the government will likely move to a system of enforcement through terror. If problems become rife enough to cause political embarrassment, and if the agency can move against only a small percentage of violators, it will make a horrible example of those few. For example, the Environ-

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6. ○□○□□
7. ○○□○□

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There are three 5-letter words in the following 15-letter sequences. The letters of each 5-letter word appear in correct spelling order, but spread out, in the 15 letters of each sequence. Find the three 5-letter words in each case.

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9. CFLAIMLMUNTHCHP
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mental Protection Agency explicitly sets penalties at levels designed to represent the expected gain adjusted for the probability of getting caught. If you save $10,000 by ignoring a rule, and the chance of your getting caught is only 1 percent, then the fine becomes $1 million.

These eventual enforcement efforts will not lack for targets, because everyone will have irresistible reasons to game the system. Students with access to cheap Internet service will respond like rational economic beings and use more of it. They will also take a broad definition of *education*, which will expand to include language arts (chat rooms), motor skills enhancement (computer games), and biology studies (on-line porn). The more enterprising will discover the glories of arbitrage. If you have free access to something that people in the real world pay for, you have something valuable to sell. This student gaming of the system will create tough enforcement problems for schools and libraries, and much debate about who is responsible for preventing it.

Schools and libraries will also have incentives to play games. They want to bring as many services as possible within the discount by interpreting the rules liberally. This impulse will be strengthened by the silliness of a basic premise of the program. The president's goal—"wire every one of 2 million classrooms"—has the same brainless quality as the targets of a Soviet five-year plan. Why should *every* classroom be wired? Might not some be used for reading, or writing, or even teaching? And is the issue not better decided at the local level? The temptation to rechannel resources into what the people at the working level *really* need will be constant.

Carriers will develop games of their own. Deep down, they may not really care what the schools and libraries do. But they don't want to be charged with granting illegal discounts, and they don't want the government to deny them their credits, so they have to cover themselves somehow. This will put them into conflict with the schools and libraries over basic issues.

All this complexity and gamesmanship will provide endless opportunities for mistakes and overreaching. And remember, mistakes and overreaching are now crimes. We've already seen this happen with the mother of all subsidy programs, Medicare. The government is involved in endless disputes with care providers over the nature of "fraud." Many of these cases involve real fraud, of course, but many are ambiguous. For example, one dispute is with teaching hospitals over staff doctors who supervise a resident who performs the actual hands-on patient care. Hospitals have been billing the doctor as a care provider; the government calls this criminal fraud. Other disputes concern the allocation of indirect overhead to health care services. Arcane and fundamentally insoluble issues of cost accounting now have criminal implications.

The president's goal—"wire every one of 2 million classrooms"—has the same brainless quality as the targets of a Soviet five-year plan. Why should *every* classroom be wired? Might not some be used for reading, or writing, or even teaching? And is the issue not better decided at the local level? The temptation to rechannel resources into what the people at the working level *really* need will be constant.

These types of conflicts will always arise in any program of subsidies for services. And talk about legal uncertainty and complexity: The government in 1997 says the hospitals should have known they were wrong because they got a letter about it in 1970. Some of the current Medicare disputes go back to interpretations made in the late 1960s, which modern practitioners are unlikely to be aware of.

In some ways, schools and libraries are fortunate: The word *willful* got inserted into the statute, so the government may well have to prove criminal intent before nailing someone. This is not true in many other regulatory areas, where knowledge and intent have been rendered irrelevant.

Lobbyists for the schools and libraries also got a provision shielding their clients from civil penalties for violating a rule unless the FCC tells them they are sinning and they continue to commit similar violations. This puts them miles ahead of the battered veterans of many other regulatory programs, where you might get a letter saying you've been trespassing on some obscure regulation for years and should please remit a check for $10,000 per day for the entire period. Many ways remain to nail the schools and libraries nonetheless, if the government puts its mind to it.

The path ahead for schools and libraries is grimly predictable. In the flush of euphoria, they will interpret things in their own favor. As good, law-abiding members of the middle class, it will barely occur to them that these interpretations are treading near the edge of criminality. Some will be cautious, but they will look foolish as others reap benefits and nothing happens to them, so they will join the parade.

After a time, scandals will hit, followed by exposés and recriminations. The FCC will move against a few institutions with the heavy guns of criminal and civil sanctions. Others will panic and decide they must have a zero-error policy. They will bring things under tighter control, asking "Mother, may I?" of the FCC for every tiny change. But the whole program will have become too complicated and contentious for its requirements to be predictable, and things will settle into the standard regulatory equilibrium of high transaction costs, quarrels over subsidies, sharp dealing, scandal, and occasional human sacrifice.

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Fine Wines and Wine Fines

Restrictions on interstate sales of alcoholic beverages turn oenophiles into smugglers.

By James Plummer

Coffee. Condoms. Salsa. Socks. You can have the finest of each, delivered monthly to your doorstep, anywhere in the United States. In this era of niche marketing, it seems that anything you could possibly desire is just a phone call or mouse click away. Except fine wines —their availability is limited by your state's liquor laws.

Lately such laws have been getting tougher. Last year Kentucky joined Florida, Georgia, and Tennessee in making it a felony to ship alcohol across state lines for personal use. This summer Maine repealed its law allowing residents to order wines from states that afforded Maine businesses the same privilege. Now sending or receiving wine for personal use is a misdemeanor in Maine, as it is in about 15 other states. Bob Frohling, head staffer of a task force on the wine industry for the National Council of State Legislatures, expects more of these laws. "At least a third of the states will reintroduce felony legislation next year," he predicts.

The states' interest in all this is quite simple—money. In recent years, Frohling estimates, the mail-order alcoholic beverage business has taken in $500 million to $1 billion annually, about half of it in wine sales. The business is growing rapidly, with many wineries taking orders on the Internet and placing ads in increasingly popular wine magazines. That's a lot of untaxed commerce.

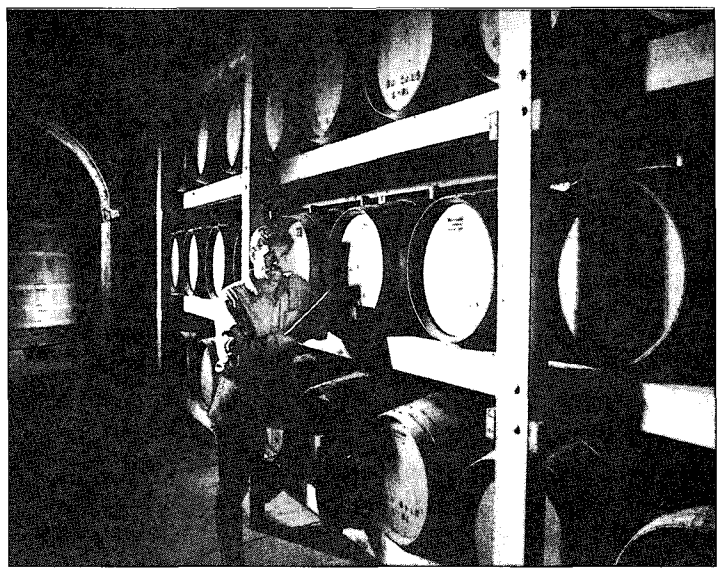
As a hangover from Prohibition, states have special authority to regulate interstate trade in alcoholic beverages. The 21st Amendment, ratified in 1933, immediately ended the federal prohibition of alcohol and turned the booze over to the states, declaring, "The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

About a dozen state governments have laws of the kind Maine recently repealed, allowing residents to receive small amounts of alcohol for personal use, provided the shipper's home state has a reciprocal law. But the practice has been outlawed in at least 20 states, including the four where both wine shippers and purchasers face felony charges if they dare to sell or buy a rare vintage not available at the corner liquor store. "We shouldn't be ranked up there with ax murderers, but I guess that's where we are," says Matt van Steenwyk, managing partner at Adelaida Cellars in Paso Robles, California. Many of Adelaida's customers have to cross their fingers and hope a nearby wine shop carries a selection from van Steenwyk's family winery.

The impetus behind the new laws isn't limited to revenue-hungry state governments. The classic coalition behind "blue laws" that ban liquor sales on Sunday consisted of Baptists, who didn't want anyone drinking on their day of rest, and bootleggers, who enjoyed windfall profits on Sundays. The Baptists are still around—most states with laws against direct alcohol shipments have a rich prohibitionist history. But the role of the "bootleggers," the people who benefit financially from restrictive laws, is now played by local distributors and vintners eager to limit competition.

Wholesalers and retailers don't like the fact that wineries can bypass them by selling their products directly to the consumer. Distributors typically portray restrictive laws as necessary to keep the tax base from eroding, since out-of-state wineries don't pay state taxes. They also play the child card. Rep. Leo Daughtry, a Republican North Carolina legislator and wine wholesaler, recently told the Raleigh *News and Observer*, "There's the idea of control [on the sales] to keep it out of the hands of minors. With mail-order, you have no idea who they're shipping to." But these purchases are made by credit card, and most states that allow direct shipping, as well as most wineries, require a signature from an adult upon receipt. Most delivery companies (it is illegal to send any alcohol through the U.S. mail) require age verification as well.

Daughtry supported (but, he insists, played no part in crafting) a law signed by Democratic Gov. Jim Hunt requiring anyone who ships wine to consumers in North Carolina to purchase a wholesalers license. Wholesalers must own, rent, or



Specialty wineries trying to expand their market shares have found their efforts stifled by local wine distributors happy to lobby legislators if doing so can keep competitors out.

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lease property in the state to get a license. The North Carolina Beer and Wine Wholesalers Association said the law was necessary because direct shipments have increased dramatically, encouraged by the convenience of Internet shopping.

A calcified, state-licensed system leaves little room for innovation. Two hundred years ago Thomas Jefferson tried unsuccessfully to start a vineyard in Charlottesville. In the past decade or two, however, resourceful and creative Virginians have been able to beat the hostile climate, and the Virginia wine industry is widely considered to be second in quality only to California's. But such experiments can't succeed if they can't find their market, and the ability of consumers to try new wines is limited by where they live.

Van Steenwyk cites Adelaida's Chenin Blanc as an example. Twenty years ago, "We called it Chenin Plonk. It was a terrible wine." Chenin Blancs were overplanted and cheaply made, and they earned a reputation as a bottom-end wine. Believing a Chenin Blanc made with care could be a great wine, Adelaida cultivated and fermented its own grapes. "We sent it out to our club, and now there are a thousand people who love this wine, who drink this wine," says van Steenwyk. "That never would have happened if I had to use the normal distribution channels." Adelaida, since it was willing to bear a risk comfortable distributors weren't, had a hit on its hands.

Van Steenwyk says mail-order wines "salt the mine," expanding the market and creating demand that wholesalers and retailers fill. Faced with more choices than ever, consumers looking for the right wine visit wineries, attend local tastings, and use the Internet and special-interest publications to gather information. With direct marketing and home delivery, retailers lose their chief advantage in serving their customers: convenience. To survive, they have to know their customers' tastes, keep abreast of the latest vintages, and stock and recommend appropriate wines. "The good ones can take care of themselves," van Steenwyk says. "They know their customers better than I do."

Small wineries like van Steenwyk's bear the brunt of the laws restricting interstate sales. "The big wineries could care less," says Dave Chesterfield of Gold Medal Wine Club. Van Steenwyk agrees. "The wholesalers don't get the deals from me and other small wineries," he says. "They get the deals from Gallo." Famous-name wines from large companies already have a sturdy distribution network. They are sold in grocery stores and wine shops throughout the country, so they don't need direct shipments to make money or make a name for themselves.

The resulting paucity of choices irritates wine aficionados like Clint Bolick, director of litigation at the Institute for Justice in Washington, D.C. "It's extremely frustrating that you can mail-order almost anything, but you can't mail-order your favorite wines," he says. "As with most other wine enthusiasts my tastes run to the small wineries. If there's no mail-order business, the odds of finding my favorite wines in a Virginia ABC store are virtually zero." It's the small wineries that are able to take risks on a premium Chenin Blanc. Large wineries, if they have guaranteed contracts with a distribution system that enjoys a near-monopoly, have little incentive to innovate—or to change the law.

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Even medium-sized vintners, if they have alternative means of distribution, may not be hell-bent on deregulation. Louisiana, which used to ban all direct wine sales from out of state, now permits them if the winery obtains a license and pays taxes. But for Gloria Ferrer Champagne Caves, a 70,000-case-a-year winery in Sonoma, California, the paperwork and taxes "are more hassle than it is worth to us," says Tom Scot, the company's hospitality director. "I have other avenues, and this one isn't big enough for us."

It's not clear how effective the restrictions on interstate wine sales are. Although Scot is quick to say his vineyard ships "to the states only where it is legal to do so," and Bolick sometimes finds himself paying a premium to specially order wine through an ABC store, another Virginia wine enthusiast names two out-of-state wineries he still receives deliveries from. But he quickly adds, "don't mention us grateful Virginians if you speak with either of them." Neither winery is mentioned in this article.

Bucking the laws can be risky. Maryland's Alcoholic Beverage Control Board recently nabbed California's Kendall-Jackson Winery in a sting operation. An ABC employee ordered one bottle of wine delivered to his home and a case delivered to his office. Kendall-Jackson elected to pay a $35,000 fine rather than face restrictions on its license to supply wholesalers. The board fined another California vintner $5,000. Maryland law provides for "the seizure of any contraband product and any vehicle or conveyance used to transport such contraband"—a policy that may have prompted FedEx's recent decision to refuse all shipment, legal or illegal, of any alcohol into or out of Maryland.

There are ways to dodge the restrictions. When potential customers call Adelaida only to find that their state prohibits mail-order wine, van Steenwyk says, "They ask, 'What's the work-around?' Then they ship it to their brother in another state, and when they visit their brother they come home with their wine."

If they have a broken taillight, they'd better hope the highway officer who pulls them over isn't familiar with laws regulating personal transport of alcoholic beverages. Many states require residents who bring wine back with them from other states to pay taxes or obtain a permit if the amount exceeds a certain limit, typically a case. It's doubtful that such rules deter many oenophiles. Says Bolick, who tours Sonoma Valley wineries once a year, "I can carry extremely heavy luggage back from California." So far he has not spotted any wine-sniffing dogs at the airport.

James Plummer (jcp9j@virginia.edu), a senior at the University of Virginia, was REASON*'s 1997 Burton C. Gray Memorial Intern.*

New Waterworld Order

Real offshore havens are on the horizon.

By Kenneth Silber

Item: Starting in mid-1998, an international corporate alliance led by Boeing will launch commercial satellites from a mobile rocket pad in the Pacific Ocean. Sea Launch, a converted oil rig, will shuttle between its California home port and a launch site about 1,000 miles southeast of Hawaii.

Item: A consortium of Japanese steel companies and shipbuilders recently constructed Mega-Float, a nearly 1,000-foot-long experimental platform in Tokyo Bay. The structure will facilitate research into possible floating airports, shipping terminals, power plants, and other facilities.

Item: The Pentagon is examining the feasibility of vast offshore military bases consisting of interlocking, self-propelled platforms. U.S. Marine helicopters may soon be relocated from Okinawa, Japan, to a stationary platform off the island's coast.

The era of the offshore platform has arrived. Of course, it arrived several decades ago for the petroleum industry, but the broader potential of maritime structures is now coming into view. For a diverse assortment of industries and organizations—and perhaps homeowners, a subject to which I'll return—floating platforms carry enormous potential benefits, from the economic and political to the environmental and aesthetic.

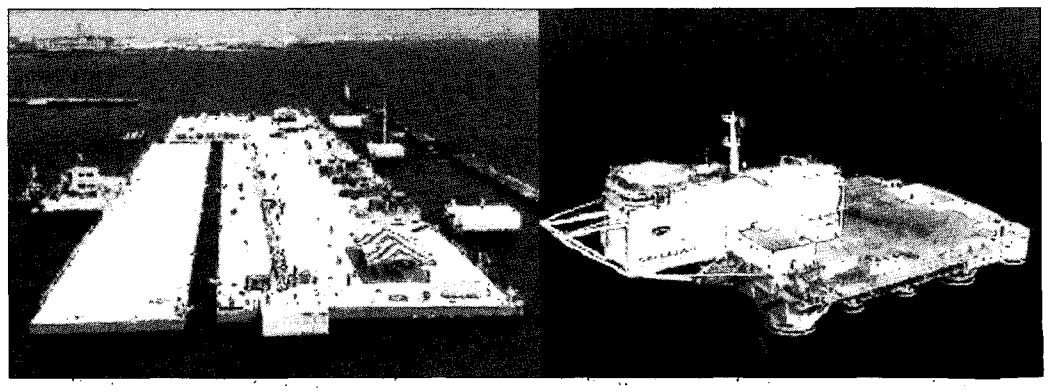
The keynotes of this technology are mobility, flexibility, spaciousness, separateness—and a high degree of freedom from government control. Such freedom may not be the objective of current projects in offshore technology; indeed, such a goal may be explicitly disavowed by companies that set out to develop maritime platforms. But having an address in international waters, or simply the capability to move readily from one harbor to another, inevitably will give a powerful new meaning to "offshore" markets and tax havens.

What might emerge is a free market waterworld. Companies saddled with too much taxation or regulation on land might move (or threaten to move) to the middle of the ocean; less dramatically, they might relocate up the coast, in a different country or state. Even without offshore technology, companies often flee from a hostile business climate to a better one. Floating platforms will make such moves easier, extending mobility to companies, such as utilities and heavy manufacturers, whose fixed presence was once assumed. And even stationary platforms, provided they are sufficiently numerous or scattered, will be difficult for regulators to micromanage from shore.

Consider some of the possibilities: Nuclear or chemical companies will be able to locate their plants miles from residential areas, free from the not-in-my-backyard litigation of environmental and community activists. Real estate developers eager to circumvent zoning regulations will build office parks with unparalleled waterfront views. Railway terminals, once seen as immovable "infrastructure," will be relocated periodically to accommodate shifting markets and demographics. Shipping and port-related industries, long among the most state-controlled and subsidized sectors of the world economy, will be swept by waves of competition.

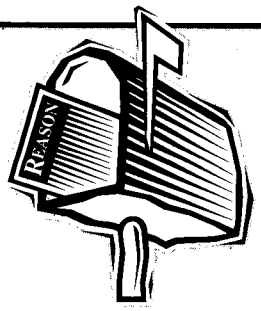
To be sure, all this will take decades. Auto workers will not soon wake up to find General Motors floating in the Atlantic. But the constraining factors for offshore projects are mainly cost and necessity, not engineering. The oil industry has developed increasingly large, sophisticated, and durable platforms in recent years. In the 1970s, drilling in several hundred feet of water was a daunting technological challenge; today, platforms and drilling ships operate in waters 3,000 or more feet deep, even in the midst of icebergs and severe storms. Big Oil is not the only industry pioneering waterworld-type technologies. Gigantic cargo ships now ply the world's trade routes. The very largest are too wide to pass through the Panama Canal and can carry twice as much freight as their counterparts of a decade ago. Cruise ships also have taken a turn toward the bigger and more grandiose. And thanks to satellite communications, offshore platforms and vessels need never be out of touch. In the oil business, vast quantities of data are routinely transmitted among drill rigs, tankers, exploratory ships, and corporate headquarters.

No utopian vision is needed to drive



LEFT: TECHNICAL RESEARCH ASSOCIATION OF MEGA-FLOAT; RIGHT: BOEING COMMERCIAL SPACE CO.

Mega-Float (left) and Sea Launch (right) offer a realistic testing ground for offshore commercial and residential communities. If successful, their physical distance from regulators may encourage other experiments in sea-based ventures.



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such technological advances. The oil industry's use of offshore platforms was motivated by very practical considerations: Terrestrial oil wells were drying up or becoming entangled in the politics of an unstable Middle East. Similarly, the Mega-Float project arose from Tokyo's chronic land crunch and high real-estate prices, as well as the desire of Japanese steel makers and shipbuilders to find new markets. The U.S. military's interest in the offshore world is fueled by the demands of post–Cold War diplomacy: Countries eager to provide bases for American troops have become harder to find in the absence of an immediate threat, and residents of places like Okinawa are less willing to put up with noisy helicopters overhead.

The Boeing-led Sea Launch Company will provide a dramatic display of offshore capabilities and advantages. The $500 million project comes at a time when a boom in the commercial satellite industry has caused bottlenecks and delays at traditional (mostly government-owned) launch sites such as Cape Canaveral. The oceangoing platform, measuring 430 by 220 feet and equipped with an array of diesel engines, will conduct most of its launches from the equator, where the earth's rotation provides the greatest boost for lifting satellites into high orbits. A separate ship will serve as command center and rocket assembly facility.

Nuclear or chemical companies could locate miles from residential areas, free from the not-in-my-backyard litigation of community activists. Real estate developers eager to circumvent zoning regulations could build office parks with unparalleled waterfront views.

Sea Launch, it should be noted, will operate under U.S. regulatory licenses, and company President Allen Ashby downplays any notion that the platform's location in international waters carries political significance. In practice, however, the project will be free of the environmental protests that have confronted rocket launches in Florida, Japan, and elsewhere. Also, Sea Launch, a joint venture that includes Russian and Ukrainian rocket makers, will be shielded from protectionist pressures that elsewhere have hindered international collaboration in the aerospace industry.

With such a diverse range of industrial activities taking shape, can offshore residences be far behind? Might full-fledged communities, perhaps even whole new countries, be formed on platforms? Proposals along those lines have bobbed up occasionally over the years, some with an explicitly libertarian theme. True, no floating housing complex has yet begun construction, let alone been completed—not surprising, since startup costs might well run into the billions. But sooner or later, costs will decline and some critical mass of condo buyers will be achieved. A real Ocean City will come into existence.

Will that be a good thing? Perhaps not. A central virtue of maritime technology is the independence it affords from land-based authority. Less clear is whether offshore communities will have a high degree of freedom internally. Traditionally, ships and offshore platforms (as well as planes, trains, and other mobile or isolated entities) have operated along more-or-less authoritarian lines, often by necessity; there can, after all, be only one captain, at least at any given time. A floating city, especially one that regards itself as sovereign, will have the difficult task of constraining its own command-and-control tendencies.

Be that as it may, offshore technology overall offers vast promise for expanding freedom and prosperity. Putting businesses on platforms is a logical extension of current trends—the rise of the Internet, the invention of new financial instruments—that already have strengthened markets and weakened central authorities. Furthermore, government control need not (and should not) disappear altogether for a thriving ocean-based economy to emerge. Being a few thousand miles from shore confers a certain autonomy, even without a declaration of independence. ◆

Kenneth Silber (ksilberny@aol.com) writes about science, technology, and economics.

Literature in Chains

Are superstore databases turning books into pretzels?

By Charles Paul Freund

America's literary culture may be going the way of pretzels, according to an August front-page story in *The New York Times*. The reason is a tightening relationship between publishers and such book superstores as Borders and Barnes & Noble. This intimacy has become a matter of concern, the story said, because of fears that "the few large national chains could ultimately dictate production and packaging in the literary marketplace as, say, the mass merchant Wal-Mart does with its toothpaste and pretzel suppliers."

What's happened? Some publishers have made decisions based on advance orders from the chains, and have taken their advice on cover designs and title wording. A shocked independent bookstore buyer told the *Times* that it was "heart stopping" that "a publisher is allowed to make a decision based on a few people's tastes." Noting that publishers are using the chains' databases rather than visiting hundreds of stores as they once did, the *Times* observed that the new practices are "a far cry from the rumpled-cardigan, reading-glasses style by which publishers used to gauge the literary marketplace."

What we have here is a new version of a story that the cultural establishment has been telling itself for many years: that the culture is being debased by commercial vulgarians; that the means of cultural production are being consolidated—and our tastes manipulated—for profit; that the human spirit itself is being commodified. The Approaching Triumph of Loutishness is a sustaining myth of the tastemaking class, validating the status, role, and presumed refinement of those who identify with it. Born of technophobia, cultural inertia, and an antipathy to the market, this familiar narrative of doom may be soothing to an increasingly hard-pressed group. But it completely obscures what is actually going on in the culture.

The fact is that the *Times*'s reporting of its story about the chains refutes its own interpretation of it. Taking the same set of facts, a reader might have discerned not lazy publishers conspiring with chains for easy profit, but desperate publishers scrambling to comprehend changing reading patterns; not victimized readers with reduced choices, but readers whose tastes and desires are reshaping the world of books; not a literary marketplace reduced to the scale of Wal-Mart's pretzel display, but an increasingly diverse availability of books in which small publishers enjoy a bigger role than they have ever had. Not, in short, a threat to book culture, but an effort to revitalize it.

What's behind the publishers' coziness with the chains? According to the *Times*, the undisputed motive is unsold books: Sales of general-interest hardbacks have fallen 12 percent this year, with a return rate of some 45 percent. But the problem is not that people are spending less time reading. Not only are the chains growing—a premise of the story—but survey evidence (reported by the same journalist in another *Times* story) indicates that book reading has actually increased in the past decade.

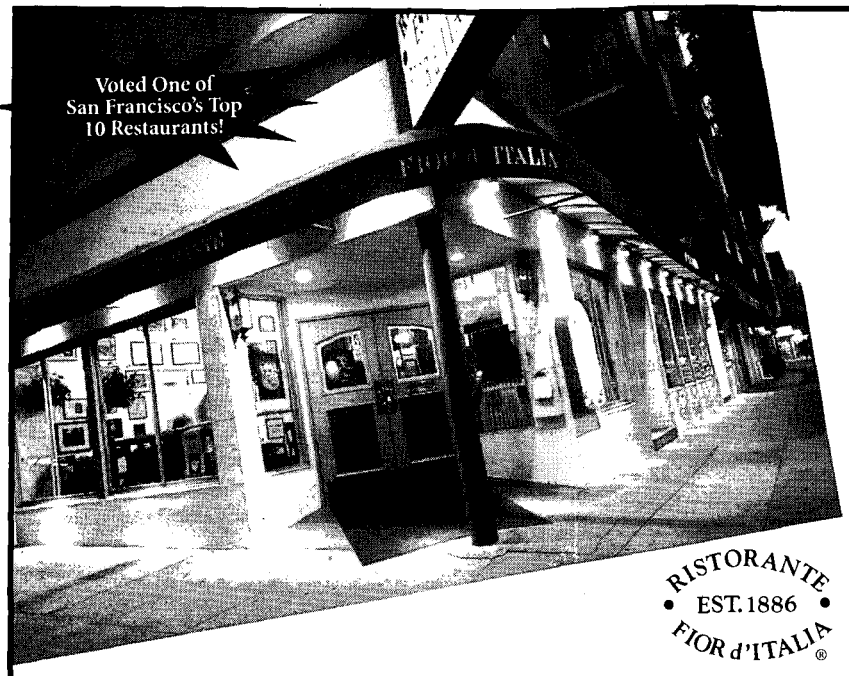
The problem is that publishers have lost track of what new books readers want. To adjust, they have trimmed their lists and are turning to those in the book trade who are more successful than they are: the growing chains.

Why the publishers have lost track of the public's taste is not yet clear. A full answer would have to take into account the feedback problems endemic to any small, isolated managerial group such as Manhattan's publishers. But an obvious supposition is that some of their sources of information have become inaccurate. Among the most important of these sources are the independent bookstore buyers on whom they had relied since the good old days of rumpled cardigans and reading glasses. These buyers' sense of the market may have become as unsure as the publishers'.

Enter the chains' number crunchers, neither romantic nor necessarily interesting figures. Their databases do not contain their personal preferences or tastes, nor do they reflect the elitist cultural vision of the best that has been written and thought. But these databases do contain something vital to a successful reading culture: reliable information about the preferences and tastes of a growing segment of the book-buying public. The use of such information would obviously enlarge the influence of that public, rather than diminish it; it would not mean, as the embittered store buyer complained in the *Times*, turning over publishing decisions to "a few people's tastes."

Whether the chains' sales are themselves representative remains to be seen. The chains are neither ubiquitous nor always appealing (the staffs, for example, are not especially knowledgeable). But the *Times*'s own story notes (and then ignores) that publishers continue to consult with smaller stores and that, in any event, relying on the chains is apparently a temporary measure. The *Times* reports that the makers of Soundscan, a system that gathers point-of-purchase data about music sales, have approached publishers about a similar system for book sales, one that would include all kinds of stores.

Finally, even as it compares books to toothpaste, the *Times*'s own story reveals that the publisher-superstore nexus is a spur to publishing diversity. Not only have the huge stocks of the chains (upwards of 120,000 titles) brought thousands of small-press books before a larger buying public than they ever had before, but the chains' databases contain feedback helpful to the more obscure publishers. After all, little presses have never had the money to send sales people to hundreds of stores, or to monitor the market in any other way. The old, tweedy system actually favored the big publishers; the new, computerized one



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helps the small houses.

The *Times* story even cites two examples of little publishers whose business has grown because of the feedback from the chains. One of the publishers has brought several out-of-print authors back into the market at the instigation of chain buyers. But both of these examples are buried at the bottom of the piece.

Many of the conclusions chain buyers and publishers are drawing from the databases may be unwarranted; many of the title changes and jacket redesigns the chains have suggested may be mistakes. But the point is that no commercial decision is made in publishing that the elite establishment does not see as a threat to its taste, which it interprets as a cultural debasement. Publishing historian Kenneth C. Davis has described the contempt expressed for the paperback when innovative postwar publishers introduced it in the United States. Among those expressing that contempt were the established publishers who, in their tweediest possible period, believed that most Americans weren't interested in books at all.

If there is a problem in the American literary culture, it is the elite establishment itself. The evidence is the continuing suffocation of literary fiction. Sales of such titles have clearly withered, and publishers are regularly accused of failing to nurture the field. But the market hasn't abandoned literature; the elite establishment long ago removed serious literary writing from the marketplace and entombed it in the universities and little magazines.

The English novel was born of Grub Street hackwork; American genres sprang from pulps. For all the junk they produce, markets are vital, unpredictable places. Much literary fiction today is divorced from any market, springing from creative writing seminars and directed to university theorists and elitist critics. If there ever was a literary culture shaped by "a few people's tastes," this is it, and the result is that those few people now constitute most of the market for it. In fact, about the only places you can find a selection of it, outside of specialty stores, are the superstore chains.

Charles Paul Freund (cpf@reason.com) is a REASON *senior editor.*

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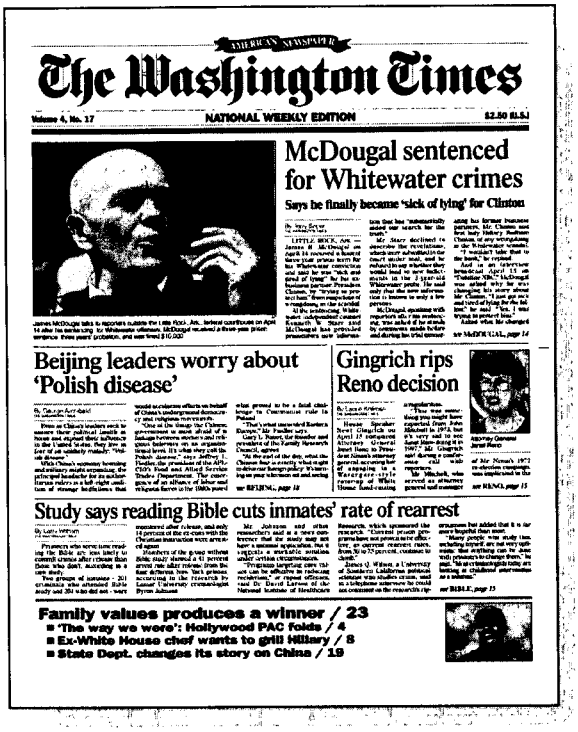
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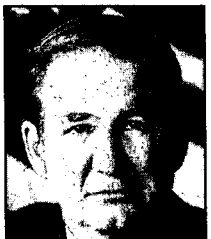

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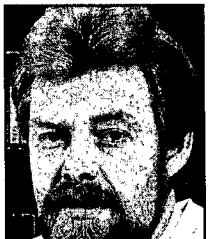

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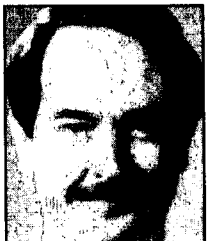

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Say What?

Civil rights enforcers go after "accent discrimination."

By Walter Olson

People tell me I speak with a peculiar accent, hard to place geographically. This might some day keep me from a lucrative second career as a talk show host, an injustice that would apparently tug at the heartstrings of our federal government, which has lately been cracking down on one of the newer infractions on the ever-expanding list of bias offenses: "accent discrimination."

It's true: the Equal Employment Opportunity Commission and private lawyers are hitting employers with legal complaints for preferring jobholders whose manner of speech is familiar and understandable to the customers and co-workers they deal with. In fact, in many cases it has become legally suspect for companies to insist on strong communications skills. The immigrant-rights unit of the U.S. Department of Justice has run subway and newspaper ads warning that the "ability to speak fluent English" must not "affect your decision about hiring a prospective employee."

Don't blame this all on the Clintonites. The Bush administration EEOC actually pioneered the trend in 1992, when it filed charges against a California company that had fired a credit manager with a strong Indian accent. Robert Gaskins, former CEO of Eiki International, told the *Orange County Register* that customers had complained that Rambhai Patel's phone calls on overdue accounts were "rude and insensitive" as well as hard to understand. Rather than fight, Gaskins's company agreed to settle without admitting wrongdoing for $12,000, plus undisclosed damages. As employment settlements go, $12,000 isn't that high. Maybe bill collectors whose manner is perceived as unfriendly are in such demand from other businesses that they don't stay out of work for long.

A more widely publicized case came up the same year when a state court in Washington upheld a verdict against Seattle-based People's National Bank, which didn't think Cambodian-born Phanna Xieng had shown strong enough language skills to qualify for a post where he'd interact with irate customers turned down for loans. Xieng's lawyers called medical experts who claimed the shock of not getting promoted was so psychologically traumatic that it would prevent their client from working for at least five years. It brought back memories, they said, of mistreatment at the hands of the deadly Khmer Rouge. And voilà: a $389,000 award.

Westfield Mayor George Varelas, himself a Greek immigrant with a marked accent, backed the parents. "Persons like myself—and I cannot be confused with someone from Boston or Alabama—should not be" in charge of 5- and 6-year-olds' first language skills. "I would only impart my confusion and give them my defects in terms of language."

Civil rights enforcers admit there are some circumstances where employers may legitimately consider accents. They just take an ultra-narrow view of what's legitimate. Consider the controversy that engulfed the town of Westfield, Massachusetts, a couple of years ago.

The town's school system had assigned instructor Ramon Vega to an experimental program where he'd teach language skills to first- and second-graders. Some parents had trouble understanding Vega's conversation themselves and worried that their kids might have the same problem. Four hundred of them proceeded to sign a petition asking that instructors in early grades be proficient in "the accepted and standard use of pronunciation."

When word reached Boston, all hell broke loose. The state education commissioner charged the parents with "bigotry." The National Education Association rushed through a resolution at its annual meeting decrying disparate treatment on the basis of "pronunciation"—quite a switch from the old days when teachers used to be demons for correctness on that topic. A foundation voted a $100,000 grant to be sent to the town for more bilingual programs to enlighten the populace.

Experts popped up and were quoted saying expert things. Donaldo Macedo, described as "director of graduate studies in bilingual education" at a local university, accused the parents of "linguistic racism" and declared to the *Boston Globe* that "there's not a single piece of research in linguistics that shows children who are raised by someone with a heavy accent acquiring that accent"—a curious assertion that would seem to raise the question of how kids ever happen to grow up with heavy accents at all (as well as sidestepping parents' concerns, of which the actual transmission of accent was probably not the most important).

Globe columnist Alan Lupo took the lead in the condescension derby, calling the parents "know nothings" who yearn for a "homogenized" world and "fear changes they cannot or do not wish to fathom"; he advised them to "educate themselves about change and help their kids prepare for it." Lupo pegged the parents as the kind of chillingly competitive overachievers "who begin tracking their kids' educational and professional careers when the children are barely out of diapers."

All of which suggested he hadn't spent much time in Westfield, a rather gritty mill town heavily populated by first- and second-generation ethnics. In fact it

should come as no great surprise that immigrants are often strong supporters of setting high standards for English proficiency: Not only do they see fluency as crucial to their children's success, but they keep running into that arch-frustration: dealings among novice English speakers whose original languages are not the same.

Westfield Mayor George Varelas, himself a Greek immigrant with a marked accent, backed the parents. "Persons like myself—and I cannot be confused with someone from Boston or Alabama—should not be" in charge of 5- and 6-year-olds' first language skills. "I would only impart my confusion and give them my defects in terms of language." Varelas got sacks of supportive mail from around the country. But it was Massachusetts Attorney General Scott Harshbarger who had the last word. Harshbarger's office quickly ruled that it would be unlawful for the school system to consider Vega's accent, threatened to sue if they transferred him to another job, and that apparently was that.

Elsewhere, influential law professors push the new line. Stanford's Mari Matsuda has proposed in the *Yale Law Journal* that employers be made to "accommodate" shortcomings in English, just as they're now made to accommodate deaf or blind employees: Since we make them cater to "absence of speech", why not "difference of speech"? She says companies might want to hire supervisors conversant with the language their assistants wish to speak; if that doesn't work, they might try using written instructions, "sign language" and "pictographs." Another widely cited piece, in the *Harvard Law Review*, claims that "difficulty in understanding those with less common accents is socially contingent, and...customers will ultimately adjust to the accented speaker if our civil rights law insists that accented speakers be allowed to hold positions in which they regularly communicate with the public."

Won't it be frustrating for customers to have to "adjust" to hundreds of different accents? Tough. It is "necessary to reject customer preference arguments," argues Matsuda, a leader in the Critical Race Theory movement. Barring accent discrimination in service jobs "will admittedly impose some hardship on businesses that rely heavily on pleasing customer whims"—thus reducing to a mere "whim" humans' desire to communicate clearly with each other in transacting their affairs. If customers fail to understand an accent, Matsuda suggests, it might be their own fault for having "lived a monocultural life."

The result is to worsen the frictions of immigration. A February investigation by *USA Today* found language hassles to be widespread, with nearly one in four poll respondents reporting problems in the last year because a clerk, salesperson, or other service representative spoke English poorly. A mother in Long Beach, California, gasped when her 12-year-old son came back from the barber shop with his head shaved: It seemed he'd asked for just a trim, but the man with the clippers didn't speak English well. A Virginia woman found that shopping for a coffee table took 30 minutes instead of 10 "because I couldn't understand anyone and no one understood me." Students at Penn State were struggling to keep up with lectures delivered by a graduate instructor new to these shores. "Economists say the lack of language proficiency costs businesses billions of dollars," the paper reported.

It is perfectly true that many, perhaps most, of these frustrations are an inevitable cost a free society puts up with during periods of high immigration and robust labor demand. But the old principle of freedom of association in employment had a crucial advantage, namely that it gave employers discretion to balance the disadvantages of hiring the English-speaking novice for a particular job (customer frustration, the hazards of incomprehension) with the disadvantages of insisting on fluency (higher wage costs, passing up valuable skills). Now the law tries to short-circuit the calculation. And woe betide the employer who hints to a lower-level worker that he might get ahead faster if he availed himself of that good old American tradition, the accent-reduction course.

For ambitious enforcers casting their eyes on the horizon, there remains one problem: Not all accents may yet be grist for legal action. Federal anti-bias statutes say nothing about accent as a protected category, but creative lawyering has swept it in as an extension of the ban on discrimination based on national origin. A similar extension may allow workers to sue over accents associated with race. Thus one compliance manual advises employers that in choosing between native-born applicants they must not favor those whose "manner of speaking" more closely "reflects the norms of the Caucasian community." But that suggests that there may not yet be a right to sue over job decisions based on homegrown nonracial accents—although it seems plausible that a white South Carolinian with a very heavy accent might be at a disadvantage for certain jobs in Rhode Island, and vice versa.

But give the lawmakers time. Already, Cincinnati is reported to have enacted a municipal ordinance declaring "Appalachian heritage" to be a legally protected category in hiring and firing. When heading for the job interview, pack your dulcimer.

Contributing Editor Walter Olson (hambo @eci.com) is the author of The Excuse Factory: How Employment Law Is Paralyzing the American Workplace *(The Free Press) and a senior fellow at the Manhattan Institute.*

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Good Genes

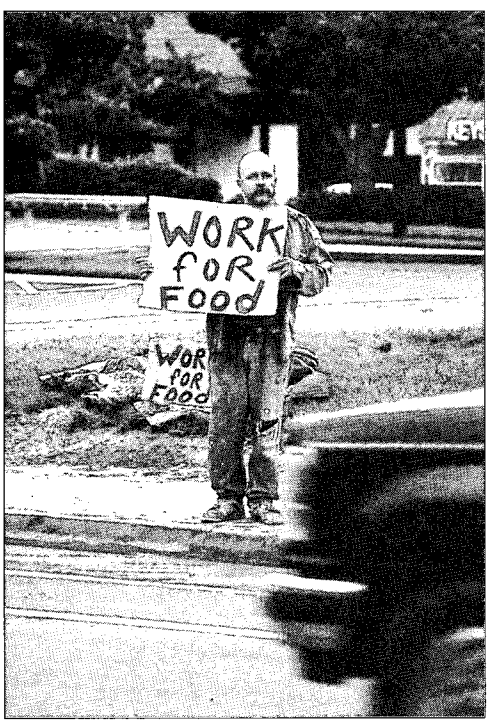
By Jack Hirshleifer

The Origins of Virtue: Human Instincts and the Evolution of Cooperation, by Matt Ridley, New York: Viking, 295 pages, $24.95

Sociobiology, the research program that inquires into the extent and limits of evolutionary influences on behavior, has been fortunate in its expositors. In addition to Edward O. Wilson's magisterial foundation text *Sociobiology* (1975), important contributions include Michael Ghiselin's *The Economy of Nature and the Evolution of Sex*, Richard Dawkins's *The Selfish Gene* and *The Extended Phenotype*, David Barash's *The Whisperings Within*, and Matt Ridley's own earlier *The Red Queen*. The growing intellectual influence of sociobiology has redeemed the "nature" portion of the nature-vs.-nurture controversy from the anti-biologism of once-reigning social science figures such as B. F. Skinner, Franz Boas, and Margaret Mead.

I hasten to add that speaking of nature vs. nurture—setting the genetic endowment in opposition to cultural influence—is seriously misleading. Almost all the phenomena needing explanation involve both elements, interwoven in subtle and fascinating ways. Our ability to pick up languages in the early years of life is a genetically ingrained capacity, but whether a child learns English or Chinese or Swahili depends on the cultural environment. Or to take an issue closer to the theme of Ridley's new book, people have an innate need to affiliate with others, to distinguish between "us" and "them." But whether the in-group and out-group are defined in terms of geography or skin color or religion or language is mainly a matter of cultural influence.

In *The Origins of Virtue*, Ridley deals with the natural selection of human instincts promoting the evolution of cooperation. (This topic has also been addressed recently in two other excellent works: Robert Wright's *The Moral Animal* and Frans de Waal's *Good Natured: The Origins of Right and Wrong in Humans and Other Animals.*) Cooperation poses an intellectual problem, since the driving principle of sociobiology is "the selfish gene"—that each and every gene has been selected over evolutionary history to be good at one thing above all else: promoting its own reproductive survival and multiplication. But genes do not float nakedly around the biosphere. They have linked up into chromosomes, and chromosomes come together in the genomes of living organisms. Thus each gene must somehow meld its own reproductive survival with that of neighbors and partners. "Selfish genes sometimes use selfless individuals to achieve their ends," writes Ridley. And this tension between cooperation and conflict in what Ridley calls "the society of genes" is reflected by the mix of selfish and unselfish drives and behaviors in organisms: "Our minds have been built by selfish genes, but they have been built to be social, trustworthy and cooperative. That is the paradox this book has tried to explain."



Does benevolence have a biological source or is it rooted in culture? Matt Ridley examines the natural selection of human instincts promoting the evolution of cooperation.

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Still, without espousing the extreme culture-is-all position of Boas, a critic might question the need for genetic explanations of morality or virtue. Even some sociobiologists, among them Richard Dawkins and George C. Williams, place morality in opposition to our inherited natures, achievable only if human culture allows us to overcome our selfish genes. Ultimately, perhaps, genes for love or for mutual aid may actually be identified along this or that chromosome. Absent such direct proof, it remains plausible to conjecture an evolutionary origin if (for example) a behavior approaches universality in the human species, if it is easy to learn and hard to eradicate, and if parallels or precursors can be identified among our cousins the apes. On these criteria, the case for a genetic source of morality is somewhat mixed. True, such virtues as courage and generosity and marital fidelity are honored in just about every human society. Yet practice falls far short. These virtues are easy to learn as precepts, but easy to forget when it comes to deeds.

On the other hand, the very fact that humans find it advisable at least to counterfeit virtue is instructive. Pretense would be pointless if the real thing did not exist. As for continuities with other species, in *Good Natured* the primatologist Frans de Waal writes: "Are animals moral? Let us simply conclude that they occupy a number of floors of the tower of morality." Overall, therefore, at least for the purpose of this review, I will provisionally accept Ridley's underlying supposition: that many of our pro-social behaviors reflect ingrained universals based on the evolution of the human species.

Some forms of cooperation, being

merely incidental to self-interested actions, do not pose any special explanatory problem. If predator efficiency is lower when prey flock together, no special virtue attaches to a prey animal who joins a flock and thereby helps all the others as well. (Sociobiologists call this the "selfish herd" model.) Or consider conventions: If everyone else is driving on the right, even in the absence of policing it would not make sense to deviate and drive on the left.

Almost as easy to explain, at least for sociobiologists, is "nepotism"—cooperating with kin. Helping one's relatives is, from the perspective of the genes, in large part self-help. Working out the details as to why some species display parental love and care while others do not, and why even in a given species there may be huge variations in response to environmental contexts and cues, is a main subject of sociobiological research.

Ridley devotes little space to these easy cases, turning quickly to the harder, more important instances: helpful acts that are not incidental by-products but require real self-sacrifice, and where kinship is not a factor. His explanation can be summarized in one word: *reciprocity.* Sacrifices on behalf of non-kin are undertaken only for compensation—I'll scratch your back if you'll scratch mine. Willingness to reciprocate is often just good business sense, but Ridley finds its source in something deeper: "[R]eciprocity may be an inevitable part of our natures: an instinct. We do not need to reason our way to the conclusion that 'one good turn deserves another.'"

In Chapter 2, Ridley convincingly argues that specialization and the division of labor among humans—among other animals, only the social insects can compare—are not evolutionarily recent consequences of urban civilization or the Industrial Revolution. Rather, they have been around long enough to be ingrained in the human psyche. A 5,000-year-old Neolithic man has been found buried with an astonishing variety of clothing, weapons, and implements of metal, bone, and textile, far beyond what a single person could himself have fabricated or appropriated. His panoply was almost surely accumulated by reciprocal exchanges within his band, possibly even among different bands.

While in sympathy with Ridley's enthusiasm, I see two difficulties. First, where is the virtue here? Most of us identify "true" virtue with *unreciprocated* generosity—for example, the soldier who throws himself on a live grenade to save his comrades. Willingness to be helpful for payment is at best a pallid sort of morality. And second, can a social order based solely upon reciprocal exchanges really be viable, or must it be founded on something more truly virtuous?

Taking up the latter question first, social systems based upon reciprocity are subject to subversion. Exchange presumes a pre-existing structure of property rights, an accepted mine and thine. But there always have been and always will be robbers ready to seize others' possessions. In a slightly different category are cheaters who fail to pay for benefits received. In mod-

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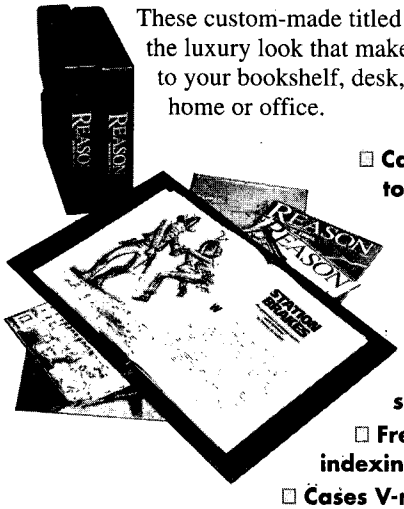

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ern times we call upon the law to keep such malefactors under control: to define and defend property rights and to enforce reciprocal agreements. For Ridley, however, trade precedes law. The problem is, absent law, how are rogues and scoundrels to be controlled?

To fend off robbers, is each person to protect his possessions by force? Granted, self-defense is not immoral, but among other problems it has the undesirable feature of making each man judge in his own cause. Ridley does not systematically address the problem, but to my mind he is on dangerous ground in approving the "harbor gangs" who have established their own de facto property rights in the Maine lobster fisheries. ("Although it is illegal to cut somebody's traps free from their buoys," he writes, "it happens regularly to any intruder.")

Ridley does deal at length with the other main type of subversion, failure to reciprocate. Chapters 3 and 4 are devoted to his claim that on this score self-enforcement will suffice. Having encountered a nonreciprocator, a person could simply decline further business interactions. This is the essence of what has become known as the "tit for tat" strategy. Tit for tat never earns short-run gains by exploiting those willing to cooperate, but its refusal to do further business with defectors means it cannot be exploited too severely either. Supposedly, tit for tat not only controls defection but does so better than any other strategy, and in fact will drive all other strategies to extinction in the evolutionary long run.

This claim, though often repeated in the sociobiological literature—like people in every field, sociobiologists mainly talk to and echo what they hear from one another—is incorrect. Game theorists know that sometimes tit for tat does OK, sometimes not; it all depends upon the specifics of the situation. Ridley is not unaware of the difficulty, and several of the most interesting passages in the book deal with it. Tit for tat would be more successful, obviously, if people could identify potential defectors in advance—and there is some evidence that they can. Also, emotions like anger may have evolved to discourage cheaters by eliciting disproportionate ("irrational") punishment reactions from victims.

Still, reciprocity alone really cannot support the weight that Ridley would have it bear; it cannot by itself explain the extent of cooperation among non-kin. A system of exchange based on property rights must rest on more than self-defense and tit-for-tat responses. In particular, disinterested third parties have to be willing to engage in what has been called "moralistic aggression" to defend victims and punish defectors. If so, reciprocity is not the origin of virtue. Rather, true morality—pro-social propensities motivated by principle or compassion rather than by expected compensation—must be there already if a system of trade and exchange is to be viable.

Granted that true virtues, extending upon occasion to heroic acts of self-sacrifice, do exist and cannot stem from mere reciprocity, how can they have evolved? In *The Moral Animal*, Robert Wright had the delightful idea of using the life of Charles Darwin himself to illustrate the role of ingrained human instincts in helping resolve ethical quandaries and moral choices. In his concluding pages Wright asks whether a truly civilized, generous, idealistic, honorable individual like Darwin can really be explained in terms of his selfish genes. The final conclusion: In the light of the utter ruthlessness of evolutionary logic, Charles Darwin's morality—and indeed ours, such as it is—remains "nearly miraculous."

Willingness to reciprocate is often just good business sense, but Matt Ridley finds its source in something deeper: "[R]eciprocity may be an inevitable part of our natures: an instinct. We do not need to reason our way to the conclusion that 'one good turn deserves another.'"

There are ways out of the puzzle. As suggested above, morality might be a human *cultural* development. By rising above our ingrained animal natures, by following the counsels of our sacred texts and great sages, we may have partially succeeded in a "revolt against selfish genes." An alternative, more mundane possibility was suggested by Darwin himself in *The Descent of Man*: "When two tribes of primeval man, living in the same country, came into competition, if (other circumstances being equal) the one tribe included a great number of courageous, sympathetic and faithful members,...this tribe would succeed better and conquer the other."

Darwin is suggesting that the habit of cooperation, even where disadvantageous to the individual, might be evolutionarily viable owing to differential group survival. Darwin's idea has come to be known as "group selection," a concept currently scorned by most sociobiologists (including Ridley, Wright, and de Waal). There is, however, an important dissenting minority; a forthcoming book by David S. Wilson and Elliott Sober makes a strong case for group selection. The issues involved are too technical for analysis here, but to my mind the evidence for the power of group selection—particularly in shaping the behavior of intensely group-competing species like ants and humans—seems overwhelming.

Going back to tit for tat, the intellectual enterprise of looking for a single "best" strategy is seriously misguided. What is best at any moment depends on the details of the situation and the other strategies in play. Accordingly, what we observe is not the universal adoption of any single strategy but rather an ever-changing, co-evolving mixture. In fact, as shown in some remarkable simulations by Bjorn Lomborg, viable patterns of cooperation practically always involve combinations of strategies. Producers, cheaters, and what we might call guardians (who keep cheaters under control) are typically all present simultaneously in evolving populations. This is closer to the way cooperation, halting and imperfect yet nonetheless real, is achieved in our fallen world.

Readers of this magazine will find Ridley's strong pro-market stance, set forth mainly in his final three chapters, appealing. But most libertarians and pro-market conservatives do admit, despite the evident dangers, a substantial role for government —to maintain law and order, protect property rights, and enforce contracts. As

opposed to this classical liberal orientation stemming from John Locke, Adam Smith, and our founding fathers, Ridley leans in the anarchist direction. Individuals, motivated solely by the expectation of reciprocity, can supposedly do it all themselves—establish property rights, produce, trade, punish cheaters—if only government will get out of the way.

Yet systems of dominance and subordination, which are the essence of government, are also in our evolutionary heritage, as explored notably in de Waal's *Good Natured* and Roger Masters's *The Nature of Politics.* The possible effectiveness of government for good probably rests on certain other human virtues—among them loyalty and noblesse oblige—that call for further examination. But that is the topic for another book.

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Kill Amtrak Now!

Robert W. Poole Jr.

Derailed: What Went Wrong and What to Do About America's Passenger Trains, by Joseph Vranich, New York: St. Martin's Press, 272 pages, $24.95

If the pope one morning announced that he had become a Buddhist, it would be big news. Similarly, for a longtime passenger-rail insider to denounce Amtrak as a failure and argue for its liquidation is big news. One hopes, therefore, that Joe Vranich's new book will have a major impact on Amtrak's future.

If ever there were a perfect candidate to pronounce Amtrak a flop, it would be Vranich. Consider his bona fides: former Amtrak public affairs officer, former executive director of the National Association of Railroad Passengers, and later president of the High Speed Rail Association. Vranich has been there, lobbying Congress, building coalitions, reading the GAO reports, giving speech after speech about passenger rail.

Yet Vranich, a self-described "moderately liberal Democrat, the very kind of person who has been Amtrak's strongest defender," is also an honest man. His experiences advocating new kinds of high-tech, high-speed rail brought him face to face with the reality of Amtrak's bureaucratic, status quo corporate culture, its propensity to play games with cost and performance numbers, and its thoroughly politicized nature. And that caused him to look with more objective eyes not just at Amtrak's increasingly obvious failure but also at the exciting developments happening overseas as more and more rail systems are deregulated and privatized. The result is this book.

Vranich first substantiates his case that Amtrak has failed to produce a meaningful return on the $20 billion (!) in taxpayers' money it has absorbed since its creation in 1971. His catalog of horrors includes Amtrak's dismally low speeds; after $20 billion in "investment," shouldn't riders expect trip times faster than those of the Third World today or the United States in 1952? And how many passengers know that the FDA some years ago imposed a permanent injunction on Amtrak after repeated food safety problems involving Amtrak diners—a penalty never once levied on any airline? Did you know that, just as large fractions of public school teachers send their own kids to private schools, most Amtrak employees go by plane when they go on vacation—even though they get free rail passes?

More important than these colorful facts is Vranich's assembly of solid public policy findings and conclusions. He correctly cites the Congressional Budget Office analysis finding that the Amtrak subsidy per passenger mile is more than 100 times that of other modes of intercity travel—contrary to what pro-Amtrak propaganda typically claims. He reveals that short-distance routes in the Northeast Corridor and California account for half of all Amtrak ridership—with the rest

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spread out over a politically determined spaghetti plate of hopelessly money-losing long-distance routes. And he understands that monopoly and extensive subsidies are at the root of Amtrak's poor performance.

What's most refreshing about this book, though, is that unlike most calls for Amtrak reform, it doesn't shrink from the logical conclusion of its findings: liquidation. Vranich flat-out recommends that Amtrak be shut down and its assets sold off to satisfy its creditors, ending the 26-year gravy train from federal taxpayers.

As one who believes rail can play some meaningful roles in carrying passengers—and also as a political realist who knows that you can't replace "something" with "nothing"—Vranich then offers a fairly realistic proposal for post-Amtrak passenger service. His plan draws partly on the dramatic rail deregulation and privatization which has been carried out in countries ranging from Britain, Japan, and New Zealand to Argentina, China, and Mexico over the past five years. Except in special cases like New Zealand, these reforms generally don't involve "attempting to privatize entire rail passenger systems, which are costly dinosaurs with no appeal to private investors. Instead, they are electing to abandon long-distance routes and privatize other routes"—generally, by contracting with the private firm that requires the least subsidy.

Vranich's post-Amtrak plan would devolve all responsibility for rail service from the federal government to the private sector, states, and local governments. The Northeast Corridor—the only significant track and right of way Amtrak owns—would be sold or given to the states. To make post-Amtrak train service more viable, the plan would include major deregulation: New passenger rail providers would be exempt from the chains that have bound Amtrak, including the Railway Labor Act (which, among other costly mandates, requires up to six years of severance pay for laid-off workers), the Federal Employers' Liability Act, the Railroad Retirement Act, and the Railroad Unemployment Insurance Act. The rationale? Competing passenger modes—bus and airline—aren't subject to those costly regulations.

I have only two quarrels with this otherwise splendid book. First, based on my research and reading, I am not nearly as optimistic as Vranich about the potential commercial viability of post-Amtrak high-speed rail service. His discussions of the now-abandoned Texas TGV project and the Florida Overland Express (FOX) project now under development accept the promoters' far too optimistic assumptions regarding ridership and costs. A recent analysis of FOX by transportation consultant Wendell Cox points out that, now that Southwest Airlines is providing considerable service in Florida, air fares in the Miami-Tampa and Miami-Orlando markets are *15 percent below* what FOX plans to charge, and FOX would deliver slower service for most travelers. More generally, Vranich ignores a recent Federal Railroad Association feasibility study that concluded that the average high-speed rail corridor could cover only 29 percent of its costs from commercial revenue.

Secondly, when it comes to putting together his otherwise excellent post-Amtrak plan, Vranich appears to defer to the conventional wisdom he's previously debunked, to the effect that since airlines and cars get federal subsidies, so should trains. Hence he proposes that post-Amtrak rail be eligible for subsidies via a new federal trust fund making passenger-rail block grants to the states. Yet much of the book has already shown how destructive subsidies have been for Amtrak.

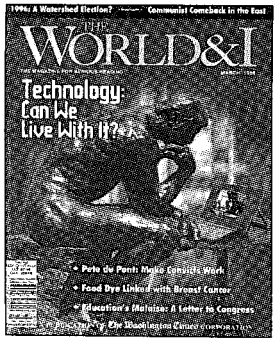
Despite these flaws, this book is tremendously important as Amtrak fights for its continued existence this fall. A major battle will take place over several serious proposals to give Amtrak an entitlement to one-half cent of the federal gasoline tax. As Vranich readily agrees, giving Amtrak such life support would doom any real chance of killing off the terminal patient.

Should you care? After all, in a $1.7 trillion federal budget, what's a billion a year in Amtrak subsidies? Vranich answers that one by quoting journalist Robert Samuelson: "The symbolic importance of ending these unjustified programs overshadows their size. If they enjoy immortality, then the political process is captive to past commitments, no matter how dubious." With Vranich's help, perhaps we can end *this* dubious commitment.

JOHN BOYD

Joe Vranich's post-Amtrak plan would devolve all responsibility for rail service from the federal government to the private sector, states, and local governments. The Northeast Corridor—the only significant track and right of way Amtrak owns—would be sold or given to the states. To make post-Amtrak train service more viable, the plan would include major deregulation.

Reason Foundation President Robert W. Poole Jr. (bobp@reason.org) is a lifelong rail fan and an expert on transportation policy.



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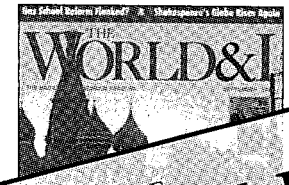

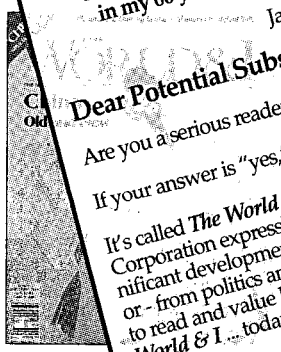

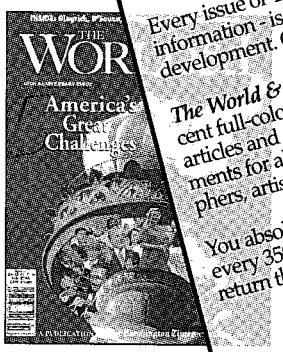

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Critique of Pure Skepticism

By Brian Doherty

Why People Believe Weird Things: Pseudoscience, Superstition, and Other Confusions of Our Time, by Michael Shermer, New York: W.H. Freeman, 306 pages, $22.95

Michael Shermer was once a born-again Christian and, during his days as a long-distance bicyclist, a patron of a bevy of quackish diets and therapies. Now he sees himself as a knight of reason squaring off against the tireless forces of superstition and unsupported belief. As such, he founded and edits *The Skeptic*, a quarterly magazine dedicated to casting a critical eye on the world of strange and bizarre beliefs.

Shermer is a relative newcomer to the field of debunking zany beliefs, dominated over the past decades by such figures as former *Scientific American* columnist Martin Gardner and stage magician James "the Amazing" Randi. Shermer's goal throughout this set of separately written essays, mostly reprinted from *The Skeptic*, is to question a grab bag of more-or-less widespread beliefs that go beyond, or against, accepted scientific evidence or thinking.

His subject matter is more important than mere entertainment, though the book does provide that—giggling over other people's bizarre thought processes can be great fun. As beings of emotion as well as reason, humans are prone to fall into mental traps, many of which Shermer addresses. Even the most far-out of true believers wants to understand the world as it really is. The world Shermer presents is full of pitfalls on that path to understanding reality, and he is a solid guide through a morass of confusion. He leaves us with, if not certainty—he admits he can't quite explain all near-death experiences—at least a better grip on what constitutes justified belief.

Shermer's episodic book covers a wide range of subjects, in a wide range of manners. He takes ritual jabs at such old debunker punching bags as ESP and UFOs (through UFOlogy's newest twist, alien abduction of humans). You'll also find cogent debunkings of strange phenomena such as fire walking and psychics who can discover "unknowable" facts about strangers. The longest sections of the book take on the more-substantive issues of creationism and Holocaust revisionism.

Shermer gives point-by-point arguments against creationist and revisionist claims, using logic and evidence, not just ridicule, as weapons. He recounts debates with creationist Duane Gish before college audiences and with Holocaust revisionists Bradley Smith and David Cole on the *Donahue* show.

Michael Shermer uses a simple Humean maxim, which in paraphrase says: It's more likely that someone would lie than that miracles occur. If a story sounds too absurd or unlikely to be true—like that ESP works or alien craft fly among us—never abandon lying as a probable explanation.

Shermer emphasizes such believers' main strategy: Never offer positive defenses of your own views—just poke holes in the "standard" stories of evolution and the Holocaust. Since science and history aren't as cut-and-dried as some laymen might think, it's easy for heretics to capitalize on science's strengths—open and hearty debate over unsettled issues—to make it seem as if biologists or historians don't know what they are talking about and are scrambling to prop up shaky stories. For example, Shermer has to admit on *Donahue* that the famous Holocaust story of Jews being turned into soap by Nazis is now understood not to be true. Holocaust revisionists use this sort of evolving understanding to imply that the whole Holocaust story is bunk.

While his topics vary, Shermer sets up a couple of overriding schemas through which to approach strange claims —one complicated and one brief. The complicated one is a list of "25 fallacies that lead us to believe weird things," with explanations of what's wrong with each. Shermer discusses classic logical fallacies such as the *ad hominem* and *tu quoquo*, and offers caveats such as "heresy does not equal correctness," "rumors do not equal reality," and "the unexplained is not inexplicable." The list has much wisdom for the wary thinker.

Also in Shermer's intellectual armory is a simple Humean maxim, which in paraphrase says: It's more likely that someone would lie than that miracles occur. If a story sounds too absurd or unlikely to be true—like that ESP works or alien craft fly among us—never abandon lying as a probable explanation. (I enjoyed applying this maxim to an anecdote of Shermer's, in which he claims that delirious weariness during a long bicycling trip induced a fantasized alien abduction experience: Is it more believable that a debunker would have an experience providing him with a perfect debunking of a popular weird belief, or that the debunker would twist the story to suit his purposes?)

Although the book certainly offers valuable insights and pleasure, sometimes it falls short of Shermer's own standards. For instance, in a chapter on Satanic cult panics, he merely presents the believers' case and declares it obviously absurd. Well, sure, but we expect a better argument than *that* for our $22.95. And the book doesn't entirely live up to its title: Shermer doesn't spend much time really addressing the question of *why* people believe the strange things they believe.

But that choice actually makes this a better book. While the psychology of believers is an interesting topic in its own right, it is not the most important element in the skeptical debunker's strategy. To debunk, the most important thing is not to

explain people's possibly twisted reasons for believing what they believe, but to challenge those beliefs with logic and evidence. After all, if logic and evidence aren't sufficient, then casting aspersions on motives isn't going to get the debunker anywhere either, except with people who believe (wrongly) that bad motives equal bad arguments.

Shermer himself seems to believe this at times, weakening his arguments. For example, his chapter on belief in racial differences in intelligence presents a reasonable critique of Robert Herrnstein and Charles Murray's *The Bell Curve*, based on the slippery definition of the concept of "race." But before he gets into that, he spends a few pages indulging in *ad hominem* assaults on the racist motives of Wycliffe Draper, the deceased founder of the Pioneer Fund, which funded some of the research the authors relied on.

Indeed, when Shermer does try to answer the "why?" question, he inadvertently provides further evidence of how difficult, and perhaps irrelevant to the debunker, the question is. He offers as the chief reason for why people believe weird things the truism that "hope springs eternal." To support this, he spends a chapter on the outre speculations of physicist Frank Tipler of Tulane University, who uses sophisticated physics to argue that in the distant future a supercomputer could essentially resurrect the dead—a hopeful thought, to say the least.

But how could Shermer miss that most of his book's weirdnesses have nothing to do with hope? The theories that Shermer explores thrust their believers into a frightening world indeed, one in which humans are snatched and experimented on by inscrutable aliens, omnipresent Satanic covens abuse and murder children, and an inferior and malevolent race has such total control over all information sources that blatant lies about recent history are accepted as gospel truth.

Clinicians have terms—*delusion* and *paranoia* among them—for what motivates those sorts of beliefs. But merely throwing around therapeutic scare words isn't enough to debunk. Again we see that answering the "why?" question can't do the skeptic's work. To thoroughly support accusations of delusion and paranoia, one

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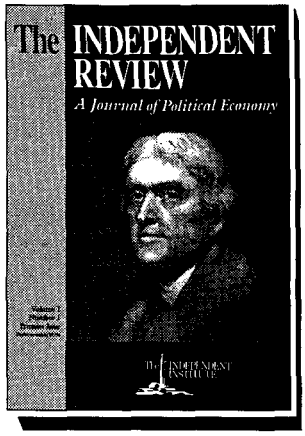

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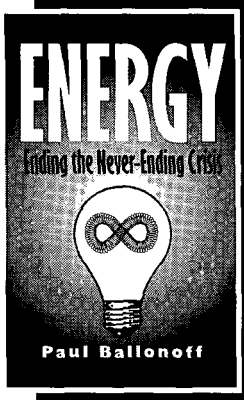

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must marshal evidence that what the believer asserts *isn't true.*

As a Humean, Shermer often likes to emphasize the inherent uncertainty in the search for knowledge. He often grapples with biblical fundamentalist thinking, countering it with an emphasis on the open-ended nature of science. In a chapter attacking the cult of personality that arose around Ayn Rand, he pinpoints the main flaw in Objectivism as the belief in reason's ability to discern absolute truths about reality and morality, which makes "the final results of inquiry become more important than the process of inquiry." His critique of Rand conflates the always small cult of personality around her with her larger audience, and thus declares a premature obituary on her philosophy: "Its absolutism was the biggest flaw in Ayn Rand's Objectivism, the unlikeliest cult in history," he writes. "The historical development and ultimate destruction of her group and philosophy is the empirical evidence that documents this assertion." (He doesn't attack every aspect of Rand's conclusions, merely her way of reaching them.)

But Shermer doesn't always follow the dictates of liberal epistemological skepticism implied in his attack on Rand. The professional debunker tends to be cocksure, often shutting off "process[es] of inquiry" because he thinks results are certain. For example, Shermer writes, "Shouldn't we know by now that the laws of science prove that ghosts cannot exist?" Maybe Shermer wouldn't have written that if he'd thought about it twice. In a similar slip, he quotes approvingly a weird paragraph from anthropologist Marvin Harris regarding witch hunts in olden times, which embodies reflexive anti-clericism more than rationality: "Did your roof leak, your cow abort, your oats wither, your wine go sour, your head ache, your baby die? It was the work of the witches. Preoccupied with the fantastic activities of these demons, the distraught, alienated, pauperized masses blamed the rampant Devil instead of the corrupt clergy and the rapacious nobility." So it was priests and princes who were making your head ache, your oats wither, and your cow abort?

Shermer exhibits the typical debunker's bland certainty that belies their stance as constant skeptics, and so maddens both opponents and some sympathizers. He lets slip lines like "Science became my belief system, and evolution my doctrine" (that's just how creationists accuse evolutionists of thinking) and "It is our job...to investigate and refute bogus claims." Not, "investigate claims to discover if they are bogus," but *investigate and refute bogus claims.* This may seem like a minor linguistic quibble, but it exactly describes the typical debunker's approach. They always know their conclusion going in—the phenomenon in question is a fraud—and are merely looking for supporting evidence.

Shermer's visit to an ESP testing lab exhibits this sometimes unpleasant attitude. It's the typical ESP routine, where people try to guess which of five simple shapes on a card is being displayed somewhere they can't see. By pure chance, one would expect five correct responses out of 25. Of course, sometimes people do better or worse than five correct. Shermer tries, of course, to dissuade his fellow test takers from believing that any results above chance indicate ESP by explaining bell-curve probability distributions.

One woman, weakening in her support for ESP, proffers the phenomenon of a friend calling just as she thought of calling the friend. How would Shermer explain *that,* she challenges. Shermer makes her realize that, as many times as that might happen, there were plenty of other times when she thought of her friend and her friend *didn't* call, or her friend called without being thought of.

Ah, maybe it was just selective perception, not ESP, the woman begins to think. Shermer is elated. A new convert to pure materialism! But the woman confounds poor Shermer by making the perfectly reasonable—given just the evidence at hand—deduction that sometimes ESP works, and sometimes it doesn't, for reasons we don't yet know enough to understand. Shermer, dedicated to a larger principle that ESP *can't exist* (based on plenty of evidence, to be sure, that's not on the table in that discussion), considers the woman's conclusion dimwitted.

That kind of uncharitable reaction, while understandable in the face of rampant, virulent credulousness, does no credit to the cause of skepticism, which should rely as rigorously as possible on evidence and reason, not holding stubbornly on to preconceptions. Still, despite his occasional flaws, Shermer makes clear that virulent credulousness is more on the march in our world than virulent skepticism, and shows that his chosen profession is a valuable one. ◆

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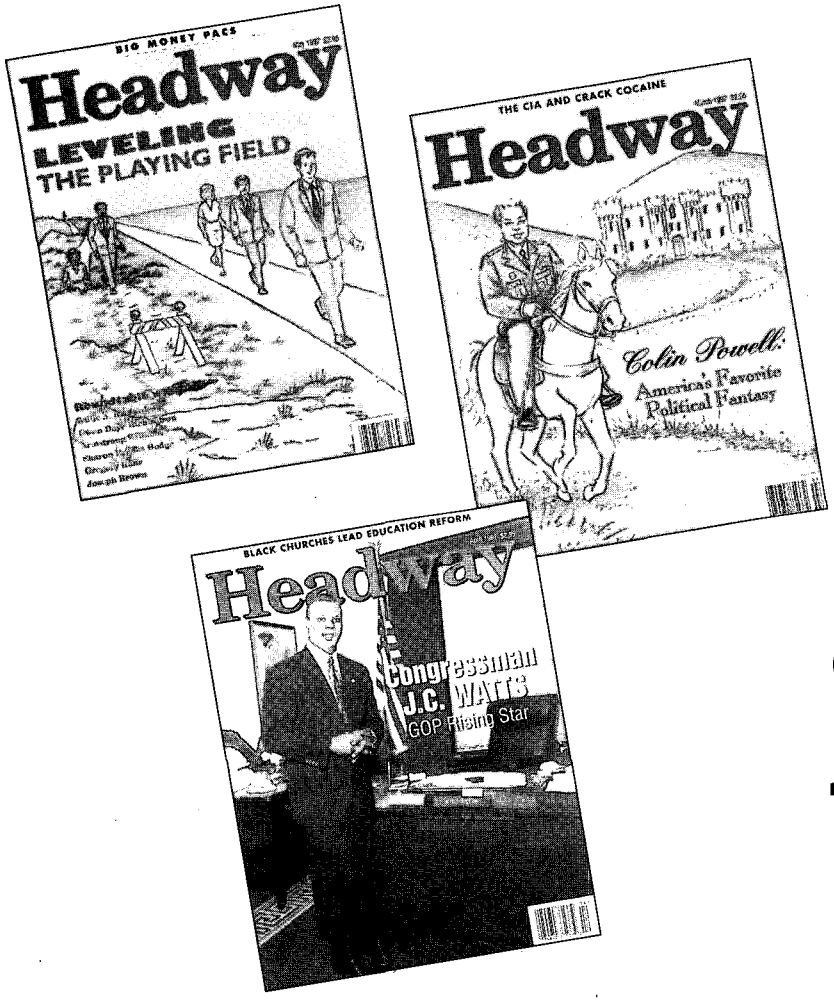

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Presidential Softball

Clinton gets blanked by the Supremes.

By Thomas W. Hazlett

There is a growing awareness that our president occupies some ethereal political space where the annoyances of actual events rarely intrude. Piggybacking on angels, he floats free of the gravitational forces that limit lesser men.

And so it seems not a bit odd that his administration's recent legal gambits, twice played before the U.S. Supreme Court (*Jones v. Clinton* and *Starr v. Clinton*), have resulted in two 9–0 defeats and yet not a twinge of embarassment. Although former Law Professor Clinton's notoriously poor legal reasoning easily scaled the laugh test with Messrs. Brokaw, Jennings, and Rather, it drew guffaws from the high court—indeed, even from those arbiters of justice, Breyer and Ginsburg, selected by the president himself.

The first lost legal cause was Clinton's argument that he should not be dragged into court by Paula Jones while president. The rationale was that the chief executive needed to devote all his time to the duties before him.

Some might note that managing the affairs of state in the greatest country in the history of the world might well prove challenging even without the added burdens of telephoning hard-to-get-ahold-of fat cats for the Democratic National Committee. And they would be right—although the inordinate amounts of coffee Clinton was sipping in private meetings with wealthy CEOs might have given him a caffeine rush sufficient to surmount such a challenge.

The deeper allegation, of course, was that a sitting president is extremely vulnerable to such suits, which could be filed out of political (or other) animus simply to harass the nation's leader. "Clinton's lawyers have argued that permitting any phase of the litigation to take place before he leaves office would not only disrupt his conduct of the presidency," wrote *The New York Times*, "but would open the gates for a flood of frivolous civil suits against himself or his successors."

It's worth noting that *Jones v. Clinton* is the first such suit in 200 years. At that rate, we could be inundated by nearly half a dozen such cases over the next millennium. Things could even speed up, prompted by the lure of Mrs. Jones's easy money. Which is precisely why—if our legal system's filter to block "frivolous" suits is so porous as to permit the harassment of the man with the best lawyers in America—I want the president to be the *first* person subject to court costs, legal fees, and senseless hassle. I want Clinton, the busy Big Kahuna, the man who has the power to fix the system but in fact *vetoes* reform to limit lawsuits, to be the American taster for this lawyer-cooked soup.

The Court then turned its attention to Special Prosecutor Kenneth Starr's request for notes taken by a White House lawyer, Jane C. Sherburne. The Clintons argued that Sherburne, who consulted with Hillary Rodham Clinton about Whitewater matters, could keep her papers confidential under lawyer-client privilege.

The problem: Sherburne is a government employee, and works for the people of the United States. Ms. Clinton had the right to hire her own lawyer, which she did. In that case, attorney-client privilege would be respected, which it was (and is).

Black and white? Not to the nation's leading sources and "experts." *The Washington Post*'s David Broder anguished, "I had my doubts about [Starr's] case." The prestigious *National Journal* blandly asserted, "Some legal experts predict that the Court will side with the White House because the more-conservative Justices have shown a deference for executive power." The upcoming case was cited as a possible "landmark decision" that "could have a profound effect" on government operations. A learned law professor, reported the *Journal*, "said the case is a tough one."

How tricky can 9–0 be? Indeed, the proffered defense was absurd: Half the federal workforce has a law degree. You can't make conversations with government bureaucrats privileged, outside of North Korea, anyway. If you did, any time a lawyer was dragged into the room (which they always would be—some would wander the hallways for this purpose), the public's right to know would be quashed.

In a democracy, presidential counsels serve as an especially rich source of inside information regarding criminality at the highest levels. Does the name John Dean ring a bell? No "lawyer-client privilege" for President Nixon's White House counsel. Indeed, Dean sang like a choir boy with a bucket of ice in his shorts.

The Clintonian assertion of exemption and privilege provoked nary a peep. Blessed be David Broder, who did come to glimpse a message: The Court "was pointedly reminding current and future presidential aides: Don't let your loyalties to the president who appointed you blind you to the higher duty you owe your country." Oh, yes, that principle. Very subtle.

Losing a double-header 18–0 appears not as shameful for the president as it would be for the Atlanta Braves. Wasting the Court's time, stretching out an expensive process for litigants, and throwing absurd arguments at the wall? (No *problemo* —at least until the presidential defense fund gives out. With Lippo's earnings healthy, not much chance of that.)

So long as this administration hangs suspended by luck, pluck, and media gullibility above earthly things, even sham arguments can buy time and add more distance from political accountability. When this administration talks about "frivolous" litigation, bear in mind that it has convincingly demonstrated just how all-pervasive a problem this is.

Contributing Editor Thomas W. Hazlett (hazlett@primal.ucdavis.edu) teaches economics and public policy at the University of California at Davis.

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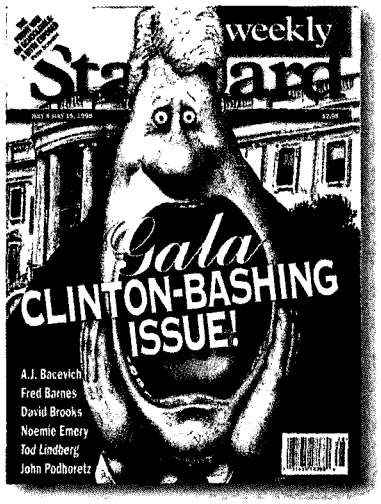

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